TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 373.

FORTESQUE WHITTLE, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED AUGUST 14, 1906.

(20,338.)

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a In the Supreme Court of the United States.

In re Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,

vs.

MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; Jos. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Hon. EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the eastern district of Virginia; Morgan Treat, United States Marshal in and for the eastern District of Virginia; Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia, and filed in the Clerk's office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the b petition of Fortesque Whittle for writs of *habeas corpus* and certiorari, Fortesque Whittle, appellant, *versus* Morgan Treat, United States Marshal in and for the eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge, in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

c Legal service of the within citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Marshal's Fees for service $6.00.

Further executed this 23rd day of July 1906 by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of the within citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

Marshal's Fees for service $2.00.

d [Endorsed:] No. —. Circuit Court of the U. S., Eastern District of Virginia. In the Matter of the Petition of Fortesque Whittle for Writs of *Habeas Corpus* and Certiorari. Fortesque Whittle, Appellant, *vs.* Morgan Treat, United States Marshal &c., *et als.*, Appellees. Citation. Filed this 14th day of July, 1906. Joseph P. Brady, Clerk.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in April, being the second day of the same month, in the year of our Lord one thousand, nine hundred and six.

Present: The Honorable Nathan Goff, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

2 *Petition for Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Virginia:

The Petition and Complaint of Fortesque Whittle respectfully shows to the Court:

1.

That your petitioner is a citizen of the United States, and is a citizen and resident of the Eastern District of Virginia, and is unlawfully imprisoned and restrained of his liberty by Morgan Treat, United States Marshal for the Eastern District of Virginia, in the City of Richmond, and County of Henrico, in said District. That your petitioner is held by said Marshal under color and claim of authority of the United States, by virtue of a warrant for removal claimed to have been issued under section 1014 of the Revised Statutes of the United States, dated July 14th, 1906, signed by the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, and has been committed and is detained only under and by virtue of said warrant, and not by virtue of any judgment, decree or final order of any court.

3 On the 14th day of July, 1906, at the said City of Richmond, in said District, complaint in writing signed and sworn to by Morgan Treat, United States Marshal in and for said District, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, was presented to the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States for the said District,

in and by which it was aver-ed that he, the said Morgan Treat, United States Marshal, had good cause to believe and did believe that your petitioner has been indicted by the grand jury of the Circuit Court of the United States in and for the Middle District of Tennessee, for that your petition- on the 8th day of July, 1903, and during the period of time from that date until and on the first day of September, 1905, and being during said period Vice-President of the Virginia-Carolina Chemical Company, a corporation existing under the laws of the State of New Jersey, did, in the said Middle District of Tennessee, unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section 1 of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against restraints and monopolies," and that on the 8th day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, your petitioner did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit: The offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25th, 1906, a certified copy of which indictment said complaint states was thereto attached and made
4 a part of said complaint, and in and by which said complaint, said complainant did, therefore, charge that your petitioner did commit the said offense against the United States in the manner and form as set forth in said indictment, and did furthermore aver in said complaint upon information and belief, that in pursuance of an order of the said Circuit Court of the United States for the Middle District of Tennessee, a Bench Warrant has been issued from said Court for the arrest of your petitioner and delivered to the Marshal of the said Court, who, after due search, had returned said warrant "Not found" in said Middle District of Tennessee, and that your petitioner is now believed to be within the Eastern District of Tennessee, of which District he is a resident.

And said complainant, said Morgan Treat, United States Marshal, in and by said complaint did therefore pray that your petitioner might be arrested, imprisoned, and removed or bailed, as the case might be, for trial before said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law; all of which will appear from the said complaint, a copy of which is hereto attached as aforesaid, reference thereto being hereby made for greater certainty. And that thereupon, to-wit, on the said 10th day of July, 1906, a warrant for his arrest was issued by the Honorable Edmund Waddill, Jr., Judge as aforesaid, upon the aforesaid complaint, which came to the hands of the said Morgan Treat, Marshal as aforesaid, and he, in obedience thereto, arrested your petitioner and brought him before the said Honorable Edmund Waddill, Jr., Judge as aforesaid, and made return of said warrant, endorsed thereon, and a copy of said warrant

with the endorsement thereon is hereto attached marked "Exhibit B" and made a part hereof.

3.

That thereupon then and there, the United States Attorney in and for the said Eastern District of Virginia, for and on behalf of the United States, did offer and introduce in evidence to
5 and before the said Judge, in support of the averments of the said complaint of said Morgan Treat, United States Marshal, a certified copy of the said indictment mentioned and referred to in the said complaint. A certified copy of said indictment so offered and introduced in evidence is hereto attached, marked "Exhibit C," and made a part hereof, and the identity of your petitioner with and as the said Fortesque Whittle mentioned and referred to in said indictment as one of the defendants therein, having been then and there admitted by your petitioner, the Government, the United States of America, introduced or offered no other or further proof or evidence in support of the said complaint or of the averments therein; but rested its case upon the said hearing of the said complaint before the said Judge.

4.

That thereupon, then and there, your petitioner, by his counsel, proceeded to offer, and offered, proof and evidence by witnesses then and there present to show that your petitioner did not within the said Middle District of Tennessee, on the 8th day of July, 1903, or during the period between the 8th day of July, 1903 and the 1st day of September, 1905, or at any other time, engage in the said alleged conspiracies in the said indictment mentioned, or any or either of them, or at any time or at any place, join in or assent to the said alleged conspiracies, engaged in or entered upon in said Middle District of Tennessee, or any or either of them, or at any time do any act in the Middle District of Tennessee in furtherance of, or to effect the object of said alleged conspiracies engaged in in said Middle District of Tennessee, or any or either of them. Thereupon, then and there, the Counsel for the Government, upon the said hearing, did object to the introduction on the behalf of your petitioner of the said evidence or any evidence or proof tending to con-
6 tradict or controvert the respective averments, or any or either of them in the said indictment and in the respective counts thereof, viz., that your petitioner did engage*d* in the said alleged conspiracy in said indictment mentioned and referred to, in the said Middle District of Tennessee, in manner and form as in the said indictment in that behalf aver-ed, or to contradict or controvert or disprove any of the averments in the said indictment contained,—on the ground, then and there stated, that upon the said hearing of said complaint, the said certified copy of the said indictment was conclusive evidence of every fact therein aver-ed to sustain and prove upon the said hearing the said complaint of the said Morgan Treat, United States Marshal, and the averments thereof, and the probable cause of the commission by

your petitioner of the said supposed offenses in the said indictment mentioned and of any and every of them in the manner and form as in the said indictment aver-ed, and in that behalf, your petitioner then and there took the witness stand and demanded to be sworn as a witness in his own behalf, but the Counsel for the Government objected, and the objection was by said Judge sustained, and he was not permitted to be sworn or to testify.

5.

That thereupon, then and there, your petitioner by his counsel stated to the Judge that he would prove, and then and there his said counsel offered to prove by your petitioner as a witness and by other witnesses then and there present, the following facts, which facts are true, that is to say, that he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July, 1903, and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he has not been in the Middle District of Tennessee or the State of Tennessee since June 1900; that he did not enter, assent to, join or engage in the
7 conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee, alleged or aver-ed in the said indictment.

6.

That the United States Attorney, on behalf of the Government, then and there objected to the introduction or reception by the said Judge of the said evidence so offered on behalf of your petitioner, and to each and every part thereof, on the ground hereinbefore stated, which objection was then and there sustained by the Court, on the ground that the said certified copy of the said indictment so introduced on behalf of the Government, the identity of your petitioner as aforesaid being admitted by your petitioner as aforesaid, was conclusive evidence of the existence of every fact stated in the indictment, including the averments that the conspiracies alleged in the said indictment were engaged in in the Middle District of Tennessee, and that therefore said evidence or any evidence offered by and on behalf of your petitioner to controvert, contradict or disprove the averments of the said indictment in that behalf, or any or either of them, was incompetent and inadmissible; and the said Judge, then and there, on the grounds aforesaid, excluded and refused to receive said evidence so offered on behalf of your petitioner, or any part thereof, to which ruling of the Judge, your petitioner then and there, by his counsel, duly excepted.

8 7.

That thereupon the said Judge, upon the complaint and upon the evidence so introduced for and on behalf of the Government as aforesaid, made and signed a certain order reciting his said rulings as aforesaid and ordering as in said order appears, which said order is as follows:

THE UNITED STATES OF AMERICA,
Eastern District of Virginia:

THE UNITED STATES
vs.
FORTESQUE WHITTLE.

This is an application under the provisions of section 1014 of the United States Revised Statutes for a warrant for the removal of Fortesque Whittle to the Middle District of Tennessee and comes before me as follows:

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me, a verified complaint of Morgan Treat, United States Marshal for this District, with the certified copy of an indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States *vs.* Virginia-Carolina Chemical Company and others defendants, including among such defendants the said Fortesque Whittle.

Said complaint and copy of said indictment are made parts of this order.

Upon the exhibition of this indictment and affidavit and the *ex parte* motion of the counsel for the United States, I made an order for the arrest of said Fortesque Whittle and his production before me.

This order was duly executed by the said Marshal, who arrested the said Fortesque Whittle and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return.

9 When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Fortesque Whittle for trial before the said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me with the Fortesque Whittle mentioned in the indictment being admitted.

And thereupon the defendant, Fortesque Whittle offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn, or to any testimony being given in rebuttal of the indictment in

these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The defendant's counsel thereupon offered to prove by the defendant, and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdiction over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify that he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July, 1903 and the first day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he has not been in the Middle District of Tennessee or the State of Tennessee since
10 June, 1900; that he did not enter, assent to, join or engage in the conspiracies in the indictment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee alleged or averred in the said indictment.

Thereupon Counsel for the Government renewed its objections as aforesaid.

After hearing counsel on both sides the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and the removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the court in which he is indicted, ar cause him to be removed thereto."

11 Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA,
Eastern District of Virginia, sct:

The within named Fortesque Whittle having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for violation of section 5440 of the Revised Statutes of the United States, it is ordered that the said Fortesque Whittle give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment; or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the Counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Fortesque Whittle to the
12 Middle District of Tennessee, and his delivery to the custody of the United States Marshal of that District.

On such motion counsel for the said Fortesque Whittle objected and again offered the said Fortesque Whittle as a witness, together with the other witnesses herebefore referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Fortesque Whittle, which testimony was again offered and was again objected to by the counsel for the United States on the same grounds above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Fortesque Whittle duly excepted and had the exceptions noted and entered.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

I therefore issued a warrant directed to the Marshal as follows:

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Fortesque Whittle stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An
13 Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Fortesque Whittle having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore;

You are hereby commanded in the name and by the authority of the said United States to imprison the said Fortesque Whittle in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14th, 1906.

8.

Your petitioner further says that he is advised, and he charges and submits, that under and by virtue of Clause 3, of Section 2, of Article 3, of the Constitution of the United States, and of the Sixth Amendment to the said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged
14 offenses against the laws of the United States, in the State and District in which the offense, which the indictment charges, was committed; that the said supposed offenses in the said indict-

ment mentioned and charged, were not, nor was any or either of them, committed in the said Middle District of Tennessee; that none of the alleged acts, transactions, matters or things which are in the said indictment mentioned or referred to as being and constituting the supposed engaging by this defendant in the said alleged conspiracies in the said indictment referred to, or any or either of them, were done or held or took place within the said Middle District of Tennessee, and no alleged act, transaction, matter or thing, in the said indictment mentioned or referred to as being the doing by this defendant of an act to effect the obect of said conspiracy was done or held or took place within the said Middle District of Tennessee; that he was not on the eighth day of July, 1903, or during the period of time between the eighth day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee, and that he had not been in the Middle District of Tennessee since June, 1900; that he did not enter, assent to, join, or engage in the conspiracies in the indictment mentioned or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time, within the Middle District of Tennessee, do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not, at any time or place, join, assent to, enter, or engage in the conspiracies, or any of them, engaged in in the Middle District of Tennessee, alleged or aver-ed in the said indictment, or do any act in pursuance of the said alleged conspiracies in the said indictment mentioned, or any or either of them, in furtherance of the said alleged conspiracies in said indictment mentioned, or any or either of them engaged in in the Middle District of Tennessee, or to effect the object of the same, or as an act on the part of your petitioner of engaging in the same.

9.

That thereupon, the United States Attorney moved the commitment of your petitioner to the Marshal of the said District for removal to the Middle District of Tennessee for trial upon the indictment in the United States Circuit Court for said District, and the said Attorney for the United States thereupon made a motion before the Honorable Edmund Waddill, Jr., Judge, for the issuance of a warrant for the removal of your petitioner to the Middle District of Tennessee for trial as aforesaid in the United States Circuit Court for said District upon the said indictment, and the said motion was allowed, and said warrant was in pursuance thereof issued by the said Judge, and a copy thereof is embraced in the order of the said Judge hereinbefore recited as and made a part hereof. That thereupon the said Marshal of the Eastern District of Virginia, to whom the said warrant was directed, took your petitioner into custody upon the said warrant and now holds your petitioner thereunder and threatens to take and remove your petitioner to the Middle District of Tennessee, as directed by the said warrant and will do so, unless your Honor shall issue the writ of *Habeas Corpus* herein prayed for. Your petitioner further says that in case your pe-

titioner is removed under the said warrant to the said Middle District of Tennessee for trial upon said indictment and is there held for trial and tried upon said indictment, your petitioner will not be tried within the District in which the said alleged offenses charged in the said indictment were committed, as required by the Sixth
16 Amendment to the Constitution of the United States, and by Clause 3, of Section 2, of Article 3 of said Constitution, and will be tried in violation of his rights under said provisions of the said Constitution. Your petitioner further says that he is advised, and he charges, that the said indictment does not charge the commission by your petitioner of any offense against the Laws of the United States, and that same is in that behalf insufficient and void.

10.

That the imprisonment and detention of your petitioner is without authority of law, and the said proceedings before said United States District Judge are illegal and the said warrant of removal was illegally issued and in violation of Article 3, Section 2, of the Federal Constitution, and of the Sixth Amendment to the said Constitution; and that then and there by the said rulings of the said District Judge, in the exclusion of the said evidence and in holding that the said certified copy of the indictment was conclusive evidence as aforesaid, and in refusing to permit your petitioner to introduce any evidence on his behalf, as aforesaid, your petitioner was deprived of rights secured to him by the said provisions of the said Constitution and by section 1014 of the Revised Statutes, and was and is by said Morgan Treat, United States Marshal, deprived of his liberty without due process of law.

Wherefore your petitioner prays that a writ of *Habeas Corpus* be issued, directed to the said United States Marshal of the Eastern District of Virginia, who has your petitioner in custody, demanding him to bring the body of your petitioner before this Court forthwith; and further that a writ of *Certiorari* be directed to the said Honorable Edmund Waddill, Jr., Judge as aforesaid, commanding that he return all proceedings against this petitioner to this court forth-
17 with, for such action as may be proper in the premises.

FORTESQUE WHITTLE,
JOHN PICKRELL, *Att'y.*

H. A. M. SMITH,
JAMES C. BRADFORD,
JOHN J. VERTREES,
MARCELLUS GREEN,
Of Counsel.

UNITED STATES OF AMERICA,
Eastern District of Virginia, County of Henrico, ss:

Fortesque Whittle being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

FORTESQUE WHITTLE.

Sworn to and subscribed to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk U. S. Circuit Court.

18 EXHIBIT A.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, 1906, at the City of Richmond, in the said District, before the Honorable Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Fortesque Whittle of Petersburg, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque Whittle on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Vice-President of the Virginia-Carolina Chemical Company, a corporation existing under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment

19 filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Fortesque Whittle did commit the said offenses against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Fortesque Whittle and delivered to the Marshal of said Court, who after due search has returned said warrant "Not found" in said Middle District of Tennessee; and that said Fortesque Whittle is now believed to be within the Eastern District of Virginia, of which district he is a resident.

Wherefore this complainant prays that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

(Signed) MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR., *Judge.*

20 EXHIBIT B.

UNITED STATES OF AMERICA, *Eastern District of Virginia, set:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Fortesque Whittle, of Petersburg, Virginia, stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque — on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now, therefore, you are hereby commanded to arrest the said Fortesque Whittle if he be found within your said District and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

EDMUND WADDILL, JR.,
District Judge.

Richmond, July 14, 1906.

21 Pursuant to the within writ, I have taken the defendant Fortesque Whittle into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

July 14th, 1906.

22 EXHIBIT C.

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the
23 Read Phosphate Company, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable

articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer, of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Bur-
24 roughs, vice-president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quanti-es of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said busi-

ness and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizer Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company, of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respectively the said Virginia-Carolina Chemical Company was the owner;

25 that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch Globe Fertilizer Company, Branch and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and

commerce, the said Swift and Company did make use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled the principal part, that is to say, ninety per centum thereof; and
26 that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts allotted and caused

to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and
27 delivered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid and pay into the said fund the sum accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund
28 arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase *of* by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan,
29 Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown,

Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fetilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Prudential Building,
Atlanta, Ga.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

No. 612
March 10", 1905.

31 We have this day shipped from Nashville, Tenn. storage

To Bramlitt Hdw Co.
Corinth, Miss.

Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand.	Tons.
400	100	King Cotton 8.2.2	20

Order No. 4613.

Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $48.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Asst. Secy." on the face of a certain stock certificate, to wit, certificate No 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
32 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of gaging in the same, the said Alabama Chemical Company, on the the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wilmington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty

dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

33 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did knowingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped

to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred and
34 three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of en-

gaging in the same, the said Federal Chemical Company, of
35 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
36 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object of
37 the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors

unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the
38 third day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, unlawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the

second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said William D. Rhea, then
39 and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did

knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and

three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too
41 voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville Tenn. Dec. 6 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the twenty-fifth day of March, in the year nineteen hundred and four,
42 and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did sign

his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of the time afore-
43 said, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the

town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
44 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENN., *May* 17–'05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS: I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5 % for cash

settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee
45 Chemical Company upon the Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise, aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited,

meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in
46 restraint of trade and commerce among the several States;

Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspiracy, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the

said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, rea-
47 sonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum ther-of during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess

sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
48 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
49 spiracy in restraint of trade and commerce among the several States; against the peace and dignity of the said United

States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be

prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the
51 same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and

the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy to commit an offense against the said United States: Against
52 the peace and dignity of the said United States; Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own name

and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local com-
53 merce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, The Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company of Delaware, the Federal Chemical

Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count,
54 to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms paid into a common fund the sum

of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
55 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when and where such defendants did and performed the acts hereinafter so set forth in connection with such defendant respectively, then

and there well knew the character of such act and that such
56 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
57 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
58 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the

County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
59 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Ten-

nessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
60 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the

first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and
61 through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucy, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commence against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Caro-
62 lina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
63 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose
64 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and

common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

65 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said consiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
66 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Ten-

nessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle
67 District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read,"
after the words "Approved—Nashville, Tenn., Dec. 6 1904"
68 and above the word "Manager" upon the face of a certain
other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he, the said Abram C. Read as Manager thereof offer-d to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee

Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

69 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were

severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect
70 trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William
71 J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Wil-

liam D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
72 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment,

as aforesaid; and on the other hand, each of said corporation defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants, hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pur-
73 suance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and

four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West
74 Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid,

consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
75 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day

and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D.
76 Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes

and Bro.," at Oxford, Alabama, that certain letter of the date
77 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
78 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansel, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R. Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. John-

ston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

79 *Order Awarding Writs of Habeas Corpus and Certiorari.*

Filed July 14th, 1906.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Let the writ of *habeas corpus*, in due form of law, as prayed for in the within petition be issued directed to Morgan Treat, United States Marshal for the Eastern District of Virginia, commanding him forthwith to make return of said writ and to produce the body of said petitioner, Fortesque Whittle, before this Court, to be dealt with according to law; and that the writ of certiorari as prayed for in said petition be issued and made returnable forthwith.

Richmond, Va., July 14th, 1906.

NATHAN GOFF,
Presiding Circuit Judge, April Term, 1906.

Writ of Habeas Corpus.

80 UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

To Morgan Treat, United States Marshal for the Eastern District of Virginia, or any of his deputies:

We command you that the body of Fortesque Whittle in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before our Circuit Court of the United States, within and for the District aforesaid, forthwith, to do and receive all and singular those things which the said Circuit Court of the United States, within and for the District aforesaid, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Cerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

To the Circuit Court of the United States for the Eastern District of Virginia:

Morgan Treat, United States Marshal for the said Eastern District of Virginia, to whom the annexed writ is directed, has now before the court the body of Fortesque Whittle therein named, as thereby commanded. And I certify that the cause of the detention of the said Fortesque Whittle is a warrant directed to me and issued by the Honorable Edmund Waddill, Jr., Judge, of the said Eastern
81 District of Virginia, on July 14, 1906, under the provisions of section 1014 of the Revised Statutes of the United States, commanding the imprisonment and removal of the said Fortesque Whittle to the Middle District of Tennessee for trial in the Circuit Court of the United States for said last mentioned district upon a certain indictment found in said last mentioned court against him, the said Fortesque Whittle and others, a copy of which warrant of removal is set out in the petition of the said Fortesque Whittle herein; and that a full, true and correct statement of all the proceedings before the said Judge upon the application for the arrest and commitment of the said Fortesque Whittle and his removal to said Middle District of Tennessee for trial is contained and set forth in the statement or order of said Judge, a copy of which is set forth in section 7 of the said Fortesque Whittle'- petition and in the documents made a part thereof and therein referred to.

MORGAN TREAT,
U. S. Marshal for the Eastern District of Virginia.

Dated this 14th day of July, A. D. 1906.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

82 We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Fortesque Whittle is defendant; and we being willing, for certain reasons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia;

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

83 *Transcript of Proceedings Before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.*

The following proceedings were had before Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, at Richmond, Virginia, on the 14th day of July, 1906.

THE UNITED STATES
versus
FORTESQUE WHITTLE.

Writ of Certiorari.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Eastern District of Virginia:

We being informed that there is now pending before you a suit in which the United States of America is plaintiff and Fortesque Whittle is defendant; and we being willing, for certain rea-
84 sons, that the said case and the record and proceedings therein should be certified by the Judge of the District Court of the United States for the Eastern District of Virginia and removed into the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia.

We do hereby command you forthwith that you send forthwith to the said Circuit Court of the United States for the Eastern District of Virginia, as aforesaid, the record and proceedings in said case, so that the said Circuit Court of the United States for the Eastern District of Virginia may act thereon as of right and according to law ought to be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 14th day of July, in the year of our Lord one thousand nine hundred and six, and of our Independence the 131st year.

[Seal of United States Circuit Court.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Return of United States District Judge.

The Clerk of the United States District Court is hereby directed to deliver to the Judges of the United States Circuit Court within and for the Eastern District of Virginia the record and proceedings mentioned in the within writ.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

85 *Complaint.*

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

On this 14th day of July, A. D. 1906, at the City of Richmond, in the said District, before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States of America for the said

District, comes Morgan Treat, United States Marshal in and for the said District, and upon his oath complains and says: that he has good cause to believe and does firmly believe that Fortesque Whittle, of Petersburg, Virginia, stands indicted by the Grand Jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque Whittle on the eighth day of July in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, being during said period Vice-President of the Virginia-Carolina Chemical Company a corporation existing under and by the laws of the State of New Jersey, did in the said Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and
86 corporations to commit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States, all as more fully set out in an indictment filed in the said Circuit Court of the United States in and for the Middle District of Tennessee on May 25, 1906, in cause No. 963, entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," a certified copy of which indictment is hereto attached and made a part of this complaint; and complainant therefore charges that the said Fortesque Whittle did commit the said offense against the United States in manner and form as set forth in said indictment.

Complainant furthermore avers upon information and belief that in pursuance of an order of said Circuit Court of the United States for the Middle District of Tennessee a bench warrant has been issued from said Court for the arrest of said Fortesque Whittle and delivered to the Marshal of said Court, who after due search has returned said warrant "not found" in said Middle District of Tennessee; and that said Fortesque Whittle in now believed to be within the Eastern District of Virginia, of which District he is a resident.

Wherefore this complainant prays that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee, and further dealt with according to law.

MORGAN TREAT, *Marshal.*

Subscribed and sworn to before me by the above named Morgan Treat the day and year first above written.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

87 *Certified Copy of Indictment.*

In the Circuit Court of the United States of America for the Middle District of Tennessee, of the April Term, in the Year of Our Lord Nineteen Hundred and Six.

MIDDLE DISTRICT OF TENNESSEE, *sct:*

The grand jurors for the United States of America, inquiring for the Middle District of Tennessee, upon their oath present, that before and on the eighth day of July, in the year of our Lord nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year of our Lord nineteen hundred and five, the following named corporations, respectively organized and existing under and authorized by the laws of the several States and of the foreign country here named in connection with them, and hereafter in this indictment called corporation defendants, to wit, the Virginia-Carolina Chemical Company, of New Jersey, Armour and Company, of Illinois, the Acme Manufacturing Company, of North Carolina, the Alabama Chemical Company, of New Jersey, the Anderson Phosphate & Oil Company, of South Carolina, the Ashepoo Fertilizer Company, of South Carolina, the Blackshear Manufacturing Company, of Georgia, the Etiwan Fertilizer Company, of South Carolina, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, The Furman Farm Improvement Company, of Georgia, the Goulding Fertilizer Company, Limited, of Great Britain and Ireland, The Goulding Fertilizer Company, of Florida, the Gulfport Cotton Oil, Fertilizer & Manufacturing Company, of Georgia, the Home Mixture Guano Company, of Georgia, the Jackson Fertilizer Company, of Mississippi, the Marietta Fertilizer Company, of Georgia, the Meridian Fertilizer Factory, of Mississippi, the National Fertilizer Company, of Tennessee, the New Orleans Acid and Fertilizer Company, of New Jersey, the Old Dominion Guano Company, of Georgia, the Planters Chemical Company, of Alabama, the Read Phosphate Com-
88 pany, of West Virginia, the F. S. Royster Guano Company, of Virginia, the Savannah Guano Company, of Georgia, the Southern States Phosphate and Fertilizer Company, of Georgia, the Standard Chemical & Oil Company, of Alabama, the Standard Guano and Chemical Manufacturing Company, of Louisiana, Swift & Company, of Illinois, the Tennessee Chemical Company, of Tennessee, and the Tennessee Valley Fertilizer Company, of Alabama, and certain firms, to wit, the firm of A. D. Adair and McCarty Brothers and the firm of Wilcox, Ives & Company, did carry on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereafter in this indictment called the States of the conspiracy, as wholesale dealers in complete and alkaline fertilizers and in acid phosphates, nitrates, and potash salts suitable for fertilizers, which then were useful and valuable articles of merchandise, indispensable for use on the soil of the said States of the conspiracy in order that the staple

crops of those States might be raised therefrom; that the following named persons, hereafter in this indictment called individual defendants, to wit, Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, of the said Virginia-Carolina Chemical Company, and J. Rice Smith, agent and manager of the said Virginia-Carolina Chemical Company, and president of the Georgia Chemical Works hereinafter mentioned, Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, Fred G. Brown, president and treasurer of the said Anderson Phosphate & Oil Company, Frank Burbidge, president, and William J. McCormack, treasurer of the said Etiwan Fertilizer Company, George Braden, president of the said Federal Chemical Company, of Delaware, and also of the said Federal Chemical Company, of Kentucky, Augustus D. Adair and James D. McCarty, officers and agents of the said Furman Farm Improvement Company and members of the said firm of A. D. Adair and McCarty Brothers, William DeC. Kessler, secretary and treasurer of the said Goulding Fertilizer Company, Limited, James G. Tinsley, president of the said Marietta Fertilizer Company and vice-president of the said Tennessee Chemical Company, William D. Rhea, general manager of the said National Fertilizer Company, William L. Peel, president of the said Old Dominion Guano Company, Abram C. Read, vice-president and general manager, and Isaac Mayo Read, agent, of the said Read Phosphate Company, Frank S. Royster, president, and Charles F. Burroughs, vice-
89 president, of the said F. S. Royster Guano Company, A. J. Ives, whose Christian name is to the said grand jurors unknown, secretary and treasurer of the said Savannah Guano Company and a member of the said firm of Wilcox, Ives & Company, T. Porter Fleming, vice-president of the said Southern States Phosphate and Fertilizer Company, and T. Garland Tinsley, president and treasurer of the said Tennessee Chemical Company, in their said several capacities as officers, managers, agents, and attorneys of the said corporation defendants and members of the said firms, and on behalf of those corporations and firms, during the period of time in this indictment first aforesaid, did carry on the business aforesaid; that in so carrying on the said business the said defendants, that is to say, the said corporation and individual defendants, did sell and deliver large quantities of the said merchandise within the limits of the said States of the conspiracy from the respective places of business of the said corporation defendants and the said firms, located at different points within those States, to retail dealers in and consumers of such merchandise, in such States respectively, and did also ship large quan-tities of the same from their respective places of business, located in the said States of the conspiracy and also in the States of Virginia, Illinois, and Kentucky, into and through other of the said States than those in which their said places of business were located; that in so carrying on the said business and shipping the said merchandise from one of the said States into and through another or others thereof, the said defendants, during the period

aforesaid, were engaged in trade and commerce among the States of this Union within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in so carrying on the said business, trade and commerce, the said Virginia-Carolina Chemical Company and the said Samuel T. Morgan, president, Fortesque Whittle, vice-president, Frank B. Dancy and Frank E. Wilcox, managers and agents, and J. Rice Smith, agent and manager, of the said Virginia-Carolina Chemical Company, did make use of and operate a portion of their said business, trade and commerce through each of certain other corporations, to wit, the American Fertilizing Company, of Virginia, the Birmingham Fertilizer Company, of Alabama, the Coweta Fertilizer Company of Georgia, the Georgia Chemical Works, of Georgia, the Navassa Guano Company, of North Carolina, of either the whole or a majority of the capital stock of which said corporations respect-
90 ively the said Virginia-Carolina Chemical Company was the owner; that in so carrying on the said business, trade and commerce, the said Armour and Company and the said Austin B. Carpenter and Charles H. MacDowell, managers and agents, and Charles G. Wilson, attorney and agent, of the said Armour and Company, did make use of and operate all of their said business, trade and commerce through a certain other corporation called the Tuscarora Fertilizer Company, of New Jersey, and a certain trade name, to wit, the trade name of Armour Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Furman Farm Improvement Company and the said firm of A. D. Adair and McCarty Brothers did make use of and operate a portion of their said business trade, and commerce under the trade name of Chickamauga Fertilizer Works; that in so carrying on the said business, trade and commerce, the said Federal Chemical Company, of Delaware, and the said Federal Chemical Company of Kentucky, did make use of, and operate a portion of their said business, trade and commerce through, the names of Century Phosphate Company, Fox Chemical Company, Branch, Globe Fertilizer Company, Branch, and Tennessee Phosphate Company; that in so carrying on the said business, trade and commerce, the said National Fertilizer Company did make use of, and operate a portion of its said business, trade and commerce through, the corporate name of American Guano Company and the trade name of Nashville Guano Company; that in so carrying on the said business, trade and commerce, the said Read Phosphate Company did make use of, and operate a portion of its said business, trade and commerce through the corporate name of Empire Guano Company; that in so carrying on the said business, trade and commerce, the said F. S. Royster Guano Company did make use of, and operate a portion of its said business, trade and commerce through the trade name of Atlantic Chemical Company and the corporate name of Columbia Guano Company; that in so carrying on the said business, trade and commerce, the said Swift and Company did make

use of, and operate the whole of its said business, trade and commerce through, the trade name of Swift Fertilizer Works; and that in so carrying on the said business, trade and commerce, the said Tennessee Chemical Company did make use of, and operate a portion of its said business, trade and commerce through, the trade name of Continental Fertilizer Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that of the total volume of such business, trade and commerce then so being carried on by the said defendants and their competitors, the said defendants together had and controlled
91 the principal part, that is to say, ninety per centum thereof; and that because the said corporation defendants and the said firms were in fact separate and distinct from each other, they should have conducted their interstate trade and commerce strictly in competition with each other, during the said period, and then would have so conducted the same but for the unlawful conspiracy in restraint of the said business, trade and commerce in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, at and within the said Middle District of Tennessee, in violation of the provisions of said section one of the said Act of Congress, unlawfully did knowingly engage in a conspiracy in restraint of the said business, trade and commerce, so then being carried on by them in the manner aforesaid, whereby the said business, trade and commerce was restrained in the several ways and by the several means now here set forth and described, that is to say:

Competition as to the prices at which the said merchandise was sold and delivered by the said corporation defendants and the said firms in the said States of the conspiracy, which before the period of time in this indictment first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was prevented and destroyed by the said defendant from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them styled "current, reasonable market prices," for the said merchandise so sold and delivered by the said corporation defendants and the said firms in those States, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so fixed and caused to be fixed; which said uniform and non-competitive prices were prices greatly in excess of the prices which but for the said unlawful conspiracy would at such times have prevailed for the said merchandise in the said business, trade and commerce, and were prices therefore unreasonable, and were a tax on the people of the said States of the said conspiracy amounting to a large sum of money, to wit, four million dollars, annually during the continuance of the same.

For and on account of such quantity of the said merchandise as was sold and delivered as aforesaid by any of such corporation de-

fendants or of such firms, in excess of amounts allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and de-
92 livered in excess, was, by the corporation defendants and firms so selling and delivering the same, paid into a common fund, held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, compensated, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as sold and delivered less than the amounts so allotted to them respectively, so it was not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy that each of the said corporation defendants and of the said firms also paid into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm, in disposing of its said allotment in carrying on the said business, trade and commerce, on its part faithfully should exercise every reasonable effort and due business diligence to maintain the prices so fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its said excess sales, in which case an equal amount was returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also made uniform and non-competitive as between all of the said corporation defendants and the said firms, in the said business, trade and commerce, among the said States of the conspiracy.

As a convenient intermediary and common agent between the said corporation defendants and the said firms, respectively and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants made use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company, Limited, was also allowed and required to collect, hold, use and distribute the said fund aris-
93 ing from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of September, in the year nineteen hundred and three, during the period of time aforesaid, at and within the City of New York, in the State of New York, unlawfully did knowingly, deposit with the Continental Trust Company, of the said City of New York, the sum of twenty-six thousand dollars, in connection with the purchase of by the said trust company on behalf of the said Virginia-Carolina Chemical Company, and in the name of one Montrose Stuart, a clerk in the office of the said trust company, of twenty-six hundred shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Samuel T. Morgan, on the seventh day of October, in the same year nineteen hundred and three, and during the period of time aforesaid, at and within the said city of New York, in the State of New York, unlawfully did deliver to the said William DeC. Kessler, Vice-President of the said Colonial Development Company, Limited, three checks drawn by the said Virginia-Carolina Chemical Company, one upon the National City Bank, of New York City aforesaid, for eighty thousand dollars, another on the Bank of America, of New York City aforesaid, for fifty thousand dollars, and the other on the National Park Bank, of New York City aforesaid, for thirty-five thousand and four hundred and sixty-eight dollars, aggregating one hundred and sixty-five thousand and four hundred and sixty-eight dollars, as and for a payment, by the said Virginia-Carolina Chemical Company, to the said Colonial Development Company, Limited, of twenty cents a ton on its allotment under the said unlawful conspiracy; he the said Samuel T. Morgan, when and where he so as aforesaid delivered the said checks to the said William DeC. Kessler, well knowing the character and purpose of the same, and well knowing that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as acts on their parts respectively of engaging in the same, the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox,
94 J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, on the seventeenth day of September, in the year nineteen hundred and three, and during the period aforesaid, at the said City of New York, in the said State of New York, unlawfully did meet together to discuss and further the object of the said unlawful conspiracy; they the said Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy,

Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives and T. Porter Fleming, when and where they so as aforesaid met together, each well knowing the character and purpose of the said meeting, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank E. Wilcox, on the first day of November, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did deliver to one W. W. Perkins, Secretary of the said American Fertilizing Company, a certain document, too voluminous to be here set forth, stating certain prices and terms of sale, fixed in pursuance of the said unlawful conspiracy, for the said fertilizer merchandise, in the States of North Carolina, South Carolina, Georgia, Florida, Alabama and Tennessee, for the spring season of the year nineteen hundred and four; he the said Frank E. Wilcox at the time and place when and where he so as aforesaid delivered the said document to the said W. W. Perkins, well knowing the character of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and was an act on his part of engaging in the same;

And that, in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, and during the period of time aforesaid, at the town of Decherd, in the said Middle District of Tennessee, by and through one
95 F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, and during the period aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to

furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, and during the period of time aforesaid, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at the City of Nashville, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, a certain notice of shipment, partly written and partly printed, in the words and figures following, that is to say:

"The Armour Fertilizer Works
Owned and operated by
Armour & Company.

Duplicate.
To be Mailed with Bill of
Lading to Customer.

Prudential Building,
Atlanta, Ga.

No. 612
March 10", 1905.

96 We have this day shipped from Nashville, Tenn. storage
To Bramlitt Hdw Co.
Corinth, Miss.
Charge to S. D. Bramlitt. Address same.

No. Bags.	Weight of bags.	Brand	Tons
400	100	King Cotton 8.2.2	20

Order No. 4613.
Bill of lading herewith. Invoice will be mailed from Chicago.
Above quantities shipped 3 10 1905. Freight Terms.....
Car No. 13619. Via L. & N.
Charges prepaid $18.00.

THE ARMOUR FERTILIZER WORKS,
Per ALEX. LESLIE."

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the

said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Austin B. Carpenter, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Assistant Secretary of the said Colonial Development Company, unlawfully did sign his name, to wit, "A. B. Carpenter, Ass't Sec'y" on the face of a certain stock certificate, to wit, certificate No. 28, showing the ownership by one Thomas M. Green of fifty-one shares of the capital stock of the said Colonial Development Company; he the said Austin B. Carpenter, at the time and
97 place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his said act to be done in pursuance and to effect the object of the said conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles H. MacDowell, on the twelfth day of January, in the year nineteen hundred and five, and during the period of time aforesaid, at and within the city of Chicago, in the State of Illinois, unlawfully did sign his name, to-wit, "C. H. MacDowell," under the name of the Armour Fertilizer Works, and after the word "by" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Armour and Company, under the trade name of "Armour Fertilizer Works," offered to furnish and deliver at Corinth, in the State of Mississippi to one S. D. Bramlitt, twenty tons of the fertilizer merchandise aforesaid; he the said Charles H. MacDowell, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Acme Manufacturing Company, on the first day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the city of Wil-

mington, in the State of North Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of six hundred and twenty dollars for sixty-two shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Alabama Chemical Company, on the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Montgomery, in the State of Alabama, unlawfully did knowingly deliver its certain check drawn upon the Merchants and Planters-Farley National Bank, Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of William DeC. Kessler, as payment for forty-two shares of the capital stock of the said Colonial Development Company, Limited;

98 And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Anderson Phosphate and Oil Company, on the twenty-ninth day of August, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Anderson, in the State of South Carolina, unlawfully did knowingly pay to the said Frank Burbidge the sum of five hundred and eighty dollars for fifty-eight shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly buy from the Carolina Savings Bank, Charleston, South Carolina, a draft upon the Citizens National Bank, of New York City, for the payment of the sum of seven thousand nine hundred and forty-nine dollars and forty-three cents to the order of one Frank E. Taylor, Vice-President and General Manager of the said Ashepoo Fertilizer Company;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Ashepoo Fertilizer Company, on the twenty-second day of June, in the year nineteen hundred and four, and *and* during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, unlawfully did knowingly cause the said Frank E. Taylor to endorse the check last above mentioned payable to the order of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Blackshear Manufacturing Company, on the seventeenth day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Blackshear, in the State of Georgia, unlawfully did know-

ingly deliver to the Atlantic Coast Line Railroad Company six tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of E. J. Blume & Company, at Live Oak, in the State of Florida;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Etiwan Fertilizer Company, on the fourteenth day of December, in the year nineteen hundred
99 and three, and during the period of time aforesaid, at and within the town of Cairo, in the State of Georgia, by and through one P. H. Seabrook, its agent, unlawfully did knowingly offer and agree to furnish and deliver to the firm of Wight Brothers, of Cairo aforesaid, thirty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Frank Burbidge, on the first day of July, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Charleston, in the State of South Carolina, having then and there in his hands a certain check, dated the thirtieth day of June, in the same year nineteen hundred and four, drawn by the said Alabama Chemical Company upon the Continental National Bank of Chicago, for the payment of eleven hundred and forty-two dollars and ninety-seven cents to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Pay to order of People's National Bank, Colonial Development Co., Ltd., F. Burbidge, Pres."; he the said Frank Burbidge then and there, to wit, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William J. McCormack, on the ninth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Charleston, in the State of South Carolina, having then and there in his hands a certain check dated the fifth day of September, in the same year, drawn by the said New Orleans Acid & Fertilizer Company, upon the Louisiana National Bank of New Orleans, for the payment of seven hundred and fifty dollars to the order of the said Colonial Development Company, unlawfully did write a certain endorsement upon the same check of the tenor following, to-wit, "Colonial Developm't Co., Frank Burbidge, Sec. & Treas., per Wm. J. McCormack"; he the said William J. McCormack, at the time and place when and where he so as aforesaid wrote the said endorsement upon the said check, well knowing his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, of
100 Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the said State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, and during the period of time aforesaid, at Springfield afore-
101 said, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff & Williams, fifteen tons of the said fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Goulding Fertilizer Company, Limited, on the twenty-fifth day of November, in the year nineteen

hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by and through one W. E. Craig, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one John Sutterer, at Cullman aforesaid, three hundred and seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the sixth day of September, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Pensacola, in the State of Florida, having then and there in his hands a certain check, dated the fifth day of September, in the same year nineteen hundred and three, drawn by the said Alabama Chemical Company upon Merchandise Merchants and Planters-Farley National Bank of Montgomery, Alabama, for the payment of four hundred and twenty dollars to the order of W. DeC. Kessler, unlawfully did sign his name, to wit, "W. DeC. Kessler," upon the back of the said check next below the written words "Pay to the order of Colonial Development Co."; he the said William DeC. Kessler then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the back of the said check, well knowing his act in the premises to be in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William DeC. Kessler, on the said fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at some place to the said grand jurors unknown, as Vice-President of the said Colonial Development Company, unlawfully did sign his name, to wit, "W. DeC. Kessler, V. P." on the face of the said stock certificate in the name of Thomas M. Green; he the said William DeC. Kessler, at the time and place when and where he so as aforesaid signed his name to the said stock certificate, well knowing the character of the same, and well knowing his act to be done in pursuance and to effect the object
102 of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Gulfport Cotton Oil Fertilizer and Manufacturing Company, on the twenty-seventh day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-four hundred dollars for and in respect of twelve thousand tons of the fertilizer merchandise aforesaid, allotted to the said Gulfport Cotton Oil, Fertilizer and Manufacturing Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy,

and to effect the object of the same, and as an act on its part of engaging in the same, the said Home Mixture Guano Company, on a day in the year nineteen hundred and three to the said grand jurors unknown, and during the period of time aforesaid, at and within the City of Columbus, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Jackson Fertilizer Company, on the fifth day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Jackson, in the State of Mississippi, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of five hundred and ten dollars for fifty-one shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Marietta Fertilizer Company, on the twenty-first day of July, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro, in the State of Tennessee, by and through one L. W. Reeves, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one James A. Boyd, at Jonesboro aforesaid, seventy-five tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said James G. Tinsley, on the third
103 day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Nashville, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley; he the said James G. Tinsley, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Meridian Fertilizer Factory, on the seventh day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Cullman, in the State of Alabama, by its agent E. L. Robbins, un-

lawfully did knowingly offer to furnish to C. A. Steifelmeyer one hundred and fifty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge; he the said
104 William D. Rhea, then and there, to wit, at the time and place when and where he so directed and required the said E. W. Connell to sign his name as aforesaid to the said check, well knowing the nature and contents of the said check, and that his said direction and requirement were in pursuance and to effect the object of the said unlawful conspiracy as aforesaid, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid; he the said William D. Rhea then and there, to wit, at the time and place when and where he so as aforesaid signed his name upon the said document, well knowing the character of the same, and well knowing his said act to be one done in pursuance of and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said New Orleans Acid & Fertilizer Company, on

the fifth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars for seventy-five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Old Dominion Guano Company, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of twenty-six hundred and twenty dollars, for and in respect of
105 thirteen thousand one hundred tons of the fertilizer merchandise aforesaid, allotted to the said Old Dominion Guano Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said William L. Peel, on the twenty-eighth day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Atlanta, in the State of Georgia, unlawfully did sign his name, to wit, "W. L. Peel, Prest.," to a certain check, to wit, a check drawn by the Maddox-Rucker Banking Company upon the National Park Bank, New York, for the payment of twenty-six hundred and twenty dollars to the order of the said Colonial Development Company, Limited; he the said William L. Peel, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Planters Chemical Company, on the thirtieth day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Talladega, in the State of Alabama, unlawfully did knowingly pay the said Colonial Development Company, Limited, the sum of fifty dollars for five shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Read Phosphate Company, on the fifth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at Hartselle, in the State of Alabama, unlawfully did knowingly offer to sell and deliver to one S. E. Stewart, at that place, forty to fifty tons of the fertilizer merchandise aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of en-

gaging in the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here
106 set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid; he the said Abram C. Read, then and there, to wit, at the time and place when and where he so signed his name to the said document as aforesaid, well knowing the character of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, and during the period of time aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved, Nashville, Tenn. Dec. 6, 1904," and above the word "Manager," upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof, offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid; he the said Abram C. Read then and there, to wit, at the time and place when and where he so as aforesaid signed his name to the last mentioned document, well knowing the character and contents of the same, and well knowing his act in the premises to be one done in pursuance and to effect the object of the said unlawful conspiracy, and that it was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said F. S. Royster Guano Company, on the thirtieth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the City of Norfolk, in the State of Virginia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine thousand three hundred and fourteen dollars and seventy-four cents, on account of such merchandise sold and delivered by the said F. S. Royster Guano Company in excess of its allotment under the aforesaid unlawful conspiracy;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said Charles F. Burroughs, on the
107 twenty-fifth day of March, in the year nineteen hundred and four, and during the period of time aforesaid, at and within

the City of Norfolk, in the State of Virginia, unlawfully did sign his name, to wit, "C. F. Burroughs," under the word "countersigned" and above the words "Vice-President" upon the face of a certain document, partly written and partly printed, too voluminous to be here set forth in full, wherein and whereby the said F. S. Royster Guano Company and he the said Charles F. Burroughs, as Vice-President thereof, offered to sell to one J. W. Carter, and to deliver to him at Maxton, in the State of North Carolina, ten tons of the fertilizer merchandise aforesaid; he the said Charles F. Burroughs, at the time and place when and where he so as aforesaid signed his name to the said document, well knowing the character and contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Savannah Guano Company, on the second day of September, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did knowingly pay to the said Frank Burbidge the sum of nine hundred and forty dollars for ninety-four shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said A. J. Ives, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of Savannah, in the State of Georgia, unlawfully did sign his name, to wit, "A. J. Ives, Secty. & Treas." to a certain check, to wit, a check drawn by the Savannah Guano Company upon the Merchants National Bank, Savannah, Georgia, for the payment of three thousand one hundred and forty dollars to the order of New York Exchange; he the said A. J. Ives, at the time and place when and where he so as aforesaid signed his name to the said check, well knowing the contents of the same, and that his said act was done in pursuance and to effect the object of the said conspiracy, and was an act on his part of engaging in the same;

And that, further n pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Southern States Phosphate and Fertilizer Company, on the fifth day of September, in the year nineteen
108 hundred and three, and during the period of the time aforesaid, at and within the City of Augusta, in the State of Georgia, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of nine hundred and sixty dollars for ninety-six shares of the capital stock of the said Colonial Development Company, Limited;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Chemical and Oil Company, on the third day of October, in the year nineteen hundred and three,

and during the period of time aforesaid, at and within the Town of Troy, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand dollars for and in respect of one-half of forty thousand tons of the fertilizer merchandise aforesaid allotted to the said Standard Chemical and Oil Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Standard Guano and Chemical Manufacturing Company, on the third day of October, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the City of New Orleans, in the State of Louisiana, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of four thousand seven hundred and seventy-four dollars and seventy-seven cents as a partial payment for and in respect of the fertilizer merchandise aforesaid, allotted to the said Standard Guano and Chemical Manufacturing Company, as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Swift & Company, on the first day of August, in the year nineteen hundred and four, and during the period of time aforesaid, at and within the town of Jonesboro in the State of Tennessee, by its agent, J. Z. Elliott, unlawfully did knowingly offer to furnish to one W. P. Diehl thirty tons of such fertilizer merchandise;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, and during the period of time aforesaid, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

And that, further in pursuance of the said unlawful con-
109 spiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, and during the period of time aforesaid, at Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes & Bro., at Oxford, Alabama, a certain letter of the tenor following, to wit:

T. G. Tinsley, Pres't & Treas. Allen Hardison, Sec'y.

Tennessee Chemical Company, Manufacturers and Importers of Ox Fertilizers.

NASHVILLE, TENNESSEE, *May* 17, '05.

Messrs. D. P. Haynes & Bro., Oxford, Ala.

DEAR SIRS:—I am in receipt of your favor of the 16th and beg to state we could not allow any discount further than the 5% for cash settlement. We will be glad to have you settle in cash on this basis if you desire to do so, but are sorry to state we are not in a position to offer you any further discount.

Yours truly, T. G. TINSLEY, *President;*

he the said T. Garland Tinsley then and there, to wit, at the time and place when and where he so as aforesaid caused the said letter to be written and sent as aforesaid, well knowing that the same was so written and sent in pursuance and to effect the object of the said unlawful conspiracy, and was an act on his part in engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on his part of engaging in the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, and during the period of time aforesaid, at and within West Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Company, James G. Tinsley. By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon the Mercantile National Bank, New York, for the payment of
110 sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley; he the said T. Garland Tinsley, at the same time and place when and where he so as aforesaid wrote the said endorsement on the back of the said check, well knowing the contents of the same, and that his said act was done in pursuance of and to effect the object of the said unlawful conspiracy, and was an act on his part of engaging in the same;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on its part of engaging in the same, the said Tennessee Valley Fertilizer Company, on the second day of December, in the year nineteen hundred and three, and during the period of time aforesaid, at and within the town of Florence, in the State of Alabama, unlawfully did knowingly pay to the said Colonial Development Company, Limited, the sum of seven hundred and fifty dollars, as a partial payment for and in respect of fertilizer merchandise aforesaid, allotted to the said Tennessee Valley Fertilizer Company as aforesaid;

And that, further in pursuance of the said unlawful conspiracy, and to effect the object of the same, and as an act on their parts respectively, of engaging in the same, the said Frank Burbidge,

Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson, during the period of time aforesaid, at the City of New York, in the State of New York, the City of Washington, in the District of Columbia, Old Point Comfort and Hot Springs, in the State of Virginia, St. Augustine, in the State of Florida, and French Lick Springs, in the State of Indiana, unlawfully did as officers, directors and attorney of the said Colonial Development Company, Limited, meet together for the purpose of discussing and attending to the affairs of the said Colonial Development Company, Limited; they the said Frank Burbidge, Wm. DeC. Kessler, Austin B. Carpenter, Frank B. Dancy, James G. Tinsley, J. Rice Smith, Frank E. Wilcox, and Charles G. Wilson when and where they so met together aforesaid, well knowing the purpose of such meetings, and well knowing their acts in the premises to be acts in pursuance and to effect the object of the said unlawful conspiracy, and that the same were done as acts on their parts respectively of engaging in the said unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, during the period of time aforesaid, and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States; Against the
111 peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the first count described, and were so engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord, nineteen hundred and three at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the grand jurors unknown, and engage in a conspidacy, among themselves and with such other

unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid; which said unlawful conspiracy in this count mentioned then and there was a conspiracy for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described; that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and commerce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing and causing to be fixed, uniform and non-competitive prices, by them to be styled "current, reason-
112 able market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such times prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful conspiracy and ninety per centum thereof during the second year; it being a further element of the said unlawful conspiracy in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be the

absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of pay-
113 ment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their co-operation in carrying out the said unlawful conspiracy, the said defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful conspiracy; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, and as being acts on the part of the said corporation and individual defendants respectively of engaging in that conspiracy, are now here in this count charged to be acts by the same corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned, and to have been acts on the part of the said corporation and individual defendants respectively of engaging in the last-named unlawful conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the

said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of trade and commerce among the several States;
114 against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporation and individual defendants and the said firms named in the first count of this indictment, in the places and in the manner and under the circumstances in that count set forth, did carry on the business, trade and commerce in the said first count described, and so were engaged in trade and commerce among the States of this Union, within the meaning of the said Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said corporation and individual defendants, during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the said United States, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the said United States, to wit, the offense of engaging in a combination, among themselves and with such other unknown corporations and persons, in restraint of the said business, trade and commerce so then being carried on by them in the manner aforesaid, which said unlawful conspiracy in this count mentioned then and there was a conspiracy to engage in a combination for restraining the said business, trade and commerce in the several ways and by the several means now here set forth and described that is to say:

Competition as to the prices at which the said merchandise was to be sold and delivered by the said corporation defendants and the said firms in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee aforesaid, which before the period of time in this count first mentioned had existed between the said corporation defendants and the said firms respectively, in the said business, trade and com-
115 merce, and which as aforesaid should have continued to exist during the said period, was to be prevented and destroyed by the said defendants from time to time fixing, and causing to be fixed, uniform and non-competitive prices, by them to be styled "current,

reasonable market prices," for the said merchandise so to be sold and delivered by the said corporation defendants and the said firms in the States last named, and selling and delivering, and causing the sale and delivery of, such merchandise, in the said business, trade and commerce, at the prices so to be fixed and caused to be fixed; which said uniform and non-competitive prices were to be prices greatly in excess of the prices which but for the said unlawful conspiracy last aforesaid would at such time prevail for the said merchandise in the said business, trade and commerce, and were to be prices therefore unreasonable, and were to be a tax on the people of the said States amounting to a large sum of money, to-wit, four million dollars, annually during the continuance of the said unlawful conspiracy.

For and on account of such quantity of the said merchandise as should be sold and delivered as aforesaid by any of such corporation defendants or of such firms, in excess of amounts to be allotted and caused to be allotted to them respectively by the said defendants, the sum of one dollar and fifty cents for each ton of ammoniated fertilizers and one dollar for each ton of other fertilizers so sold and delivered in excess, was, by the said corporation defendants and firms so selling and delivering the same, to be paid into a common fund, to be held by the Colonial Development Company, Limited, hereinafter mentioned; from which said fund the said Colonial Development Company, Limited, was to compensate, at the same rates per ton of ammoniated and other fertilizers, such of the said corporation defendants and firms as should sell and deliver less than the amounts so allotted to them respectively, so it were not less than seventy-five per centum thereof during the first year of the continuance of the said unlawful combination and ninety per centum thereof during the second year; it being a further element of the said unlawful combination in this count mentioned that each of the said corporation defendants and of the said firms was also to pay into the said fund the sum of twenty cents for and in respect of each ton of such merchandise going to make up its said allotment, to be — absolute property of the said Colonial Development Company, Limited, unless such corporation defendant or firm should, in disposing of its said allotment, in carrying on the said business, trade and commerce, on its part faithfully exercise every reasonable effort and due business diligence to maintain the prices so to be fixed and caused to be fixed as aforesaid, and pay into the said fund the sums accruing to the same on account of its excess sales, in which
116 case an equal amount was to be returned to the corporation defendant or firm so paying it into the said fund.

The terms of sale of the said merchandise by the said several corporation defendants and the said firms, as to times of payment and discounts, were also to be made uniform and non-competitive as between the said corporation defendants and the said firms, in the said business, trade and commerce, among the States last mentioned.

As a convenient intermediary between the said corporation defendants and the said firms, and as a means of securing their cooperation in carrying out the said unlawful combination, the said

defendants were to make use of the Colonial Development Company, Limited, a corporation organized under the laws of the Province of Ontario, in the Dominion of Canada; that is to say, the shares of the capital stock of the said Colonial Development Company, Limited, were to be apportioned among the said corporation defendants and the said firms approximately upon the basis of their said allotments, and such shares were to be sold to them by the said Colonial Development Company, Limited, at the rate of ten dollars per share, and the moneys accruing from such sale were to be held and used by the said Colonial Development Company, Limited, so as to further the object of the said unlawful combination; and the said Colonial Development Company was also to be allowed and required to collect, hold, use and distribute the said fund arising from payments on account of excess sales and from payments of twenty cents per ton as aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that each and all of the acts set forth in the said first count of this indictment as being acts by the said several corporation and individual defendants in pursuance and to effect the object of the unlawful conspiracy in that count described, are now here in this count charged to be acts by the said corporation and individual defendants, committed at the same times and places and under the same circumstances and conditions as to knowledge and intent on the part of the said corporation and individual defendants as those in that count specified, but to have been committed in pursuance and to effect the object of the unlawful conspiracy in this count of this indictment mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a con-
117 spiracy to commit an offense against the said United States;
Against the peace and dignity of the said *said* United States; *Against the peace and dignity of the said United States*, and contrary to the form of the statute in such case made and provided.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in

connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State, but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchan-
118 dise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the aforesaid business and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section one of the said Act of Congress, approved July 2, 1890, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Ala-

bama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company,
119 and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly engage in a conspiracy in restraint of commerce among the several States, to wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, whereby the said commerce was restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise which were maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the period of such unlawful conspiracy, and greatly in excess of those prices which would have otherwise prevailed in the said States during the period of such unlawful conspiracy, and were therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby earnest money was given to secure the maintenance of such prices and compensation was made to those losing volume of business by reason of maintaining such prices, that is to say:

There was from time to time allotted to each of said corporation

defendants and firms an amount of tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporations defendants and firms paid into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sums becoming due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which faithfully maintained such uniform and non-competitive prices and failed to make sales
120 and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but sold and delivered through itself and its subsidiary companies a minimum amount thereof required as a guarantee of good faith, received from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid fell short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies made such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, as a penalty upon such excess sales, paid into such common fund like amounts per ton on the said respective kinds of fertilizers, divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means whereby said unlawful conspiracy was effected, a corporation of Ontario, Canada, whose stock was apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was the common fund aforesaid into which was paid the earnest money and penalties on excess sales aforesaid, and from which was paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which the same was operated and directed.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that within the period aforesaid of said unlawful conspiracy in this count of this indictment mentioned, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and did do and perform such acts as acts on their respective parts of engaging in the said unlawful conspiracy in this count of this indictment mentioned, and that each of such defendants at the time and place when

and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant- respectively, then and there well knew the character of such act and that such
121 act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, and as an act on the part of such defendant in engaging in the same, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year, nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the
122 tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to

Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chatta-
123 nooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff & Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit,
124 "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawul conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec. 6, 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abraham C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P.
125 Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said corporation and individual defendants, during the period of time aforesaid, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the eighth day of July, in the year nineteen

hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the
126 other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United States, to wit, among the several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorney of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so

carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section one of the said Act of Congress, approved July 2, 1890, the said corporation de-
127 fendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack, George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Royster, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together, and with divers other corporations and persons to the said grand jurors unknown, and engage in a conspiracy among themselves and with such other unknown corporations and persons, in restraint of commerce among the several States, to-wit, a conspiracy in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid by which unlawful conspiracy said commerce was to be restrained by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the

various points of delivery in the said States of the conspiracy,
128 which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy, and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices, that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to make sales and deliveries of such merchandise through itself and its subsidiary companies in the said States of the conspiracy in a percentage amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation defendants and firms which through itself and its subsidiary companies should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales as aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants
and firms and paid for by them at ten dollars a share; whose
129 treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary

and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful conspiracy was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the ewenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent, F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

130 In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Dercherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one

Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesand, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company,
131 on the second day of February, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of

Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchandise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Orndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District
132 of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee, unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his, the said E. W. Connell's name as such Treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Manager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fer-

tilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn., Dec. 6 1904" and
133 above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for

the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did engage in a conspiracy in restraint of commerce among the several States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

134 SIXTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that on the eighth day of July, in the year nineteen hundred and three, and during the period of time from that day until and on the first day of September, in the year nineteen hundred and five, the several corporations named as defendants in the first count of this indictment were separate and distinct corporations and were severally organized and existing under and authorized by the laws of the several States and of the foreign country therein named in connection with each of them respectively; that the several individuals named as defendants in the said first count were severally officers, managers, agents and attorney of the said corporation defendants and members of the firms named in the said first count in connection with each of them respectively; that the said corporation defendants and firms during said period carried on business in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, Arkansas and Tennessee, hereinafter called the States of the conspiracy, in their own names and under and through the several corporate and trade names and through the other corporations named in the said first count in connection with each of them respectively, which said other corporations are hereinafter called subsidiary companies, as wholesale dealers in articles of fertilizer merchandise, in the manner and to the extent set forth in the said first count, and in so carrying on said business, sold and furnished large quantities of such fertilizer merchandise to merchants and consumers located in the said States of the conspiracy, and shipped the same from their respective places of business located at different points in the said States of the conspiracy and the States of Virginia, Illinois and Kentucky, and delivered the same at various points in said States of the conspiracy; that in so carrying on said business said corporation defendants, subsidiary companies and firms severally shipped such merchandise to and delivered the same at such various points of delivery by shipments and deliveries wholly within one and the same State, by shipments from points in one State to and deliveries at points in another State, and by shipments and deliveries between points in the same State but by way of and partly through another State, and were severally engaged both in local commerce in such fertilizer merchandise, as aforesaid, and also in commerce in such fertilizer merchandise among the several States of the United

States, to wit, among the said several States of the conspiracy and the said States of Virginia, Illinois and Kentucky, within the meaning of the Act of Congress, approved July 2, 1890, and entitled "An
135 Act to protect trade and commerce against unlawful restraints and monopolies"; that the said individual defendants named in the said first count, during said period, in their respective capacities as officers, managers, agents and attorneys of the said corporation defendants and members of the said firms named in the said first count in connection with each of them respectively, were engaged in carrying on the business aforesaid and in the aforesaid local and interstate commerce for and on behalf of the said corporation defendants and firms, respectively; and that prior to the period aforesaid, the said business and commerce had been carried on independently as between said corporation defendants and firms and in competition each with the other, as it should have continued to be so carried on during said period, and would have been so carried on but for the unlawful conspiracy next in this indictment mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, to wit, on the eighth day of July in the year of our Lord nineteen hundred and three, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of Section 5440 of the Revised Statutes of the United States, the said corporation defendants named in the said first count, to wit, the Virginia-Carolina Chemical Company, Armour and Company, the Acme Manufacturing Company, the Alabama Chemical Company, the Anderson Phosphate and Oil Company, the Ashepoo Fertilizer Company, the Blackshear Manufacturing Company, the Etiwan Fertilizer Company, the Federal Chemical Company, of Delaware, the Federal Chemical Company, of Kentucky, the Furman Farm Improvement Company, the Goulding Fertilizer Company, Limited, the Goulding Fertilizer Company, the Gulfport Cotton Oil, Fertilizer and Manufacturing Company, the Home Mixture Guano Company, the Jackson Fertilizer Company, the Marietta Fertilizer Company, the Meridian Fertilizer Factory, the National Fertilizer Company, the New Orleans Acid and Fertilizer Company, the Old Dominion Guano Company, the Planters Chemical Company, the Read Phosphate Company, the F. S. Royster Guano Company, the Savannah Guano Company, the Southern States Phosphate and Fertilizer Company, the Standard Chemical and Oil Company, the Standard Guano and Chemical Manufacturing Company, Swift and Company, the Tennessee Chemical Company and the Tennessee Valley Fertilizer Company, and the said individual defendants named in the said first count, to wit, Samuel T. Morgan, Fortesque Whittle, Frank B. Dancy, Frank E. Wilcox, J. Rice Smith, Austin B. Carpenter, Charles H. MacDowell, Charles G. Wilson, Fred G. Brown, Frank Burbidge, William J. McCormack,
136 George Braden, Augustus D. Adair, James D. McCarty, William DeC. Kessler, James G. Tinsley, William D. Rhea, William L. Peel, Abram C. Read, Isaac Mayo Read, Frank S. Roys-

ter, Charles F. Burroughs, A. J. Ives, T. Porter Fleming and T. Garland Tinsley, unlawfully did knowingly and wickedly conspire together and with divers other corporations and persons to the said grand jurors unknown, to commit an offense against the United States, to wit, to engage in a combination in restraint of commerce among the several States, namely, a combination in restraint of the aforesaid commerce in such fertilizer merchandise among the several States aforesaid, and did then and there so conspire to commit the aforesaid offense by the several means and in the several ways following, that is to say:

By the said defendants from time to time fixing and causing to be fixed a schedule of uniform and non-competitive prices upon such fertilizer merchandise to be maintained and adhered to by the said corporation defendants, subsidiary companies and firms, in carrying on the aforesaid business and local and interstate commerce, in making sales and deliveries of such fertilizer merchandise to merchants and agents buying to sell again at a profit and consumers at the various points of delivery in the said States of the conspiracy, which were to be prices greatly in excess of those that had prevailed in the said States of the conspiracy prior to the date upon which said defendants conspired as aforesaid, and greatly in excess of those prices which would have thereafter prevailed in the said States but for such unlawful conspiracy; and were to be therefore unreasonable;

By the said defendants using and causing to be used the following plan and scheme in order to secure adherence to such uniform and non-competitive prices, whereby money penalties were to be paid for the violation of such prices and compensation was to be made to those losing volume of business by reason of maintaining such prices; that is to say:

There was to be allotted to each of said corporation defendants and firms from time to time a certain tonnage of sales and deliveries of such fertilizer merchandise in said States of the conspiracy in respect to itself and its subsidiary companies, and each of said corporation defendants and firms was to pay into a common fund the sum of twenty cents a ton on such allotment as earnest money to secure both its adherence to such uniform and non-competitive prices and the payment of any sum to become due from it on account of excess sales as hereinafter set forth. And further, each of the said corporation defendants and firms which should faithfully maintain such uniform and non-competitive prices and should fail to
137 make sales and deliveries of such merchandise through itself and its subsidiary — amount corresponding to its aforesaid tonnage allotment, but should sell and deliver through itself and its subsidiary companies a minimum amount thereof to be required as a guarantee of good faith, should receive from such common fund, as compensation on account of such short sales, the sum of one and one-half dollars per ton on ammoniated fertilizers and one dollar per ton on other fertilizers, to be divided in the same ratio as in its total sales, upon the amount by which its sales and deliveries made as aforesaid should fall short of the percentage amount of its allotment, as aforesaid; and on the other hand, each of said corporation

defendants and firms which, through itself and its subsidiary companies, should make such sales and deliveries of such fertilizer merchandise in excess of its allotted percentage amount as aforesaid, should as a penalty upon such excess sales, pay into such common fund like amounts per ton on the said respective kinds of fertilizers, to be divided in like ratio, upon the amount of such excess sales aforesaid;

By using and causing to be used as a chief means of effecting said unlawful conspiracy, a corporation of Ontario, Canada, whose stock was to be apportioned among the said corporation defendants and firms and paid for by them at ten dollars a share; whose treasury was to be the common fund aforesaid into which was to be paid the earnest money and penalties on excess sales aforesaid, and from which was to be paid the compensation on account of short sales aforesaid; and which said Colonial Development Company, Limited, was to be used as a general intermediary and common agent of the said defendants in carrying out said unlawful conspiracy and the chief instrumentality, mechanism and device by and through which such unlawful combination was to be operated and directed.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that after the date of said unlawful conspiracy in this count of this indictment mentioned, and within the period aforesaid, the corporation defendants and individual defendants hereinafter named did, in pursuance of said unlawful conspiracy in this count mentioned and to effect the object of the same, do and perform the acts hereinafter set forth in connection with each of them respectively, at the several times and places and in the manner hereinafter set forth in connection with each of them respectively, and that each of such defendants at the time and place when and where such defendant did and performed the acts hereinafter so set forth in connection with such defendant respectively, then and there well knew the character of such act and that
138 such act was done in pursuance of and to effect the object of said unlawful conspiracy in this count mentioned, that is to say:

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twenty-third day of July, in the year nineteen hundred and three, at the town of Decherd, in the said Middle District of Tennessee, by and through one F. N. Watkins, its agent, unlawfully did knowingly offer and agree to furnish and deliver to one J. L. Haynes, junior, at Decherd aforesaid, sixty-five tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Virginia-Carolina Chemical Company, on the twentieth day of September, in the year nineteen hundred and three, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of such fertilizer merchandise;

In pursuance of said unlawful conspiracy, and to effect the

object of the same, the said Virginia-Carolina Chemical Company, on the twenty-second day of July, in the year nineteen hundred and four, at Decherd aforesaid, in the said Middle District of Tennessee, by its said agent F. N. Watkins, unlawfully did knowingly offer to furnish to the said J. L. Haynes seventy-five tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Virginia-Carolina Chemical Company, on the twenty-sixth day of September, in the same year nineteen hundred and four, unlawfully did knowingly cause to be delivered to the said J. L. Haynes, at Decherd aforesaid, in the said Middle District of Tennessee, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, within Nashville aforesaid, in the said Middle District of Tennessee, by one Alexander Leslie, its agent, unlawfully did knowingly deposit in the post office of the said United States there, addressed, and to be sent and delivered by mail, to the Bramlitt Hardware Company, at Corinth, in the State of Mississippi, that certain notice of shipment, partly written and partly printed, set forth and specified in the first count of this indictment, and in the words and figures as in the said first count specified;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the tenth day of March, in the year nineteen hundred and five, at West Nashville, in Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Corinth, in the State of Mississippi, consigned to the said Bramlitt Hardware Company at that place, twenty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Armour and Company, on the fourteenth day of September, in the year nineteen hundred and four, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. B. Duncan, at Jonesboro, in the State of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the Federal Chemical Company, of Delaware, on the twenty-eighth day of December, in the year of our Lord nineteen hundred and three, at West Nashville aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company fifteen tons of the fertilizer merchandise aforesaid, consigned and to be shipped to one J. F. Walker, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Federal Chemical Company, on the second day of February, in the year nineteen hundred and four, at and

within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of Hendricks Brothers and McGavock, at Athens, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the eleventh day of January, in the year of our Lord nineteen hundred and four, at Springfield, in the said Middle District of Tennessee, unlawfully did knowingly offer to furnish to the firm of Fiser, Orndorff & Williams, retail dealers in fertilizers, one hundred and forty tons of such fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the fourth day of April, in the year of our Lord nineteen hundred and four, at the City of Chattanooga, in the said State of Tennessee, unlawfully did knowingly deliver to the Nashville, Chattanooga and St. Louis Railway, fifteen tons of the said fertilizer merchan-
140 dise, consigned and for shipment through the said States of Alabama and Georgia, to the said firm of Fiser, Arndorff and Williams, at Springfield aforesaid, in the said State and Middle District of Tennessee;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Furman Farm Improvement Company, on the sixth day of April, in the year nineteen hundred and four, at Springfield aforesaid, in the said Middle District of Tennessee, unlawfully did knowingly cause to be delivered, to the said firm of Fiser, Orndorff and Williams, fifteen tons of the said fertilizer merchandise;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said James G. Tinsley, on the third day of December, in the year nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, as Vice-President of the said Tennessee Chemical Company, unlawfully did sign his name, with his official designation, to wit, "James G. Tinsley, V. P.," to a certain check bearing said date drawn by the said Tennessee Chemical Company upon The Bank of America, New York, for the payment of six thousand, seven hundred and ninety-two dollars to the order of the said James G. Tinsley;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said National Fertilizer Company, on the second day of March, in the year of our Lord nineteen hundred and five, within Davidson County, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company, for shipment by rail to Cullman, in the said State of Alabama, consigned to one T. B. Williams at that place, twenty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the sixth day of October, in the year of our Lord nineteen hundred and three, within Davidson County aforesaid, in the said Middle District of Tennessee,

unlawfully did direct and require one E. W. Connell, Treasurer of the said National Fertilizer Company, to sign his the said E. W. Connell's name as such treasurer to a certain check, dated that day and drawn by the said National Fertilizer Company upon the American National Bank of Nashville aforesaid, for the payment of the sum of four hundred and eighty dollars to the order of F. Burbidge;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said William D. Rhea, on the twenty-third day of January, in the year of our Lord nineteen hundred and five, at and within the said County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "Wm. D. Rhea," after the word "approved" and above the word "Man-
141 ager" upon the face of a certain printed document, too voluminous to be here set forth in full, whereby and wherein the said National Fertilizer Company offered to sell and deliver to one James A. Boyd, at Jonesboro, in the said State of Tennessee, fifty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the nineteenth day of November, in the year of our Lord nineteen hundred and three, within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the word "Approved" and above the word "Manager" upon the face of a certain document, partly printed and partly written, too voluminous to be here set forth in full, whereby and wherein the said Read Phosphate Company offered to furnish and deliver at Hartselle, in the State of Alabama, to one S. E. Stewart, forty to sixty tons of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Abram C. Read, on the sixth day of December, in the year of our Lord nineteen hundred and four, at and within the County of Davidson, in the said Middle District of Tennessee, unlawfully did sign his name, to wit, "A. C. Read," after the words "Approved—Nashville, Tenn. Dec 6 1904" and above the word "Manager" upon the face of a certain other printed document, too voluminous to be here set forth in full, wherein and whereby the said Read Phosphate Company and he the said Abram C. Read as Manager thereof offered to sell to the said S. E. Stewart and to deliver to him at Hartselle, in the State of Alabama, forty to fifty tons, of the fertilizer merchandise aforesaid;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said Tennessee Chemical Company, on the sixteenth day of March, in the year nineteen hundred and five, at and within West Nashville, in the said Middle District of Tennessee, unlawfully did knowingly deliver to the Louisville and Nashville Railroad Company twenty tons of the fertilizer merchandise aforesaid, consigned and to be shipped to the firm of D. P. Haynes & Brother, at Chaccalacca, in the State of Alabama;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the seventeenth day of May, in the year of our Lord nineteen hundred and five, at West Nashville aforesaid. in the said Middle District of Tennessee,

unlawfully did cause to be written and sent by mail to "D. P. Haynes and Bro.," at Oxford, Alabama, that certain letter of the date
142 set forth and specified in the first count of this indictment, in the words and figures therein set forth;

In pursuance of the said unlawful conspiracy, and to effect the object of the same, the said T. Garland Tinsley, on the twenty-fifth day of June, in the year nineteen hundred and four, at and within Nashville aforesaid, in the said Middle District of Tennessee, as attorney of the said James G. Tinsley, unlawfully did write an endorsement, to wit, "Pay to order Colonial Development Co., James G. Tinsley, By T. G. Tinsley, Atty.," on the back of a certain check, to wit, a check of the same date drawn by the said Tennessee Chemical Company upon The Mercantile National Bank, New York, for the payment of sixteen hundred and twenty-five dollars and eight cents to the order of the said James G. Tinsley.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said corporation and individual defendants, on the said eighth day of July, in the year of our Lord nineteen hundred and three, at and within the County of Davidson aforesaid, in the said Middle District of Tennessee, in manner and form in this count of this indictment aforesaid, unlawfully did conspire to commit an offense against the United States: Against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ABRAM M. TILLMAN,
United States Attorney.

(Endorsed as follows:) No. 963. United States Circuit Court, Middle District of Tennessee. *The United States vs. Virginia-Carolina Chemical Company et als.*

Indictment for violating Act of Congress approved July 2, 1890, and entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and Section 5440 R. S. U. S.

A True Bill. Robert Q. Stewart, Foreman of the Grand Jury.

Names of Witnesses Sworn and Examined Before the Grand Jury.

J. C. Adams, Henry E. Ahern, Lee Ashcraft, Eugene Atkinson, N. E. Barker, W. F. Barrett, James C. Beck, J. M. Berry, W. W. Bird, L. W. Botts, Clarence Braden, S. D. Bramlitt, A. P. Brantley,
143 B. D. Brantley, Dewitt Brown, H. C. Brown, Arthur Bussey, Hezekiah Bussey, E. J. Blume, James A. Boyd, William F. Burns, Oscar Bright, J. W. Carter, B. G. Clark, C. W. Comes, E. W. Connell, Charles Earle Currie, R. L. Davis, Joseph Denee, W. P. Diehl, A. M. Dobbs, John V. Dobson, C. H. Drayton, W. L. Dumas, J. B. Duncan, S. Eastland, T. B. Edwards, Culpepper Exum, H. C. Fischer, J. B. Fiser, Albert French, C. A. Gambrill, A. H. George, John E. Gibbs, William Gilchrist, James M. Goldsmith, A. A. Green, E. P. Grice, W. A. Hansell, G. A. Harrington, H. J. Harby, Allen Hardison, L. C. Hayne, J. L. Haynes, D. P. Haynes, R. W. Henderson, P. W. Hendricks, E. R. Hodgson, junior, E. R.

Hodgson, senior, J. L. Horn, W. E. Hudson, T. J. Hunt, R. H. Johnston, T. V. Kessler, E. M. Kirk, Henry Kirn, H. L. Law, Alexander Leslie, J. A. Lindsey, W. Hampton Logan, Harry Luck, John A. Lewis, W. F. McKenzie, Robert F. Maddox, H. W. Malloy, E. R. Manning, H. L. Milligan, J. Allen Moore, M. B. Neece, W. J. Oliver, E. Thomas Orgain, D. B. Osborne, Every M. Paget, W. W. Perkins, Dr. J. D. Plunkett, F. B. Pope, William Price, Charles Rainey, Frederick Rayfield, Isaac W. Read, W. A. Reynolds, I. T. Rhea, W. E. Richards, H. A. Rogers, V. N. Roadstrum, W. G. Sadler, G. W. Sanders, E. M. Sentelle, W. McR. Smith, R. G. Sparrow, J. F. Stackley, C. A. Steifelmeyer, S. E. Stewart, W. B. Stratford, John Sutterer, E. R. Taber, Frank E. Taylor, W. B. Taylor, W. D. Tharin, J. R. Timmerman, J. W. Todd, S. W. Travers, George H. Tucker, E. Van Winkle, J. T. Welch, O. C. Wiley, C. H. Willcox, T. B. Williams, Benjamin L. Willingham, W. S. Wight, E. G. Woodling.

Filed 11:30 A. M., May 25, 1906. H. M. Doak, Clerk, by E. L. Doak, Deputy Clerk. Abram M. Tillman, U. S. Atty.

I, H. M. Doak, Clerk of the Circuit Court of the United States in and for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect, and complete copy of an indictment filed as thereupon endorsed, etc. In witness whereof I have hereunto signed my name and affixed the seal of said court, at my office, this the 26th day of May, 1906.

[SEAL OF COURT.] H. M. DOAK, *Clerk.*

144 *Warrant.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

To the Marshal of the Eastern District of Virginia, Greeting:

Whereas complaint in writing, on oath, has been made to me charging that Fortesque Whittle of Petersburg, Virginia stands indicted by the grand jury of the Circuit Court of the said United States in and for the Middle District of Tennessee, for that the said Fortesque Whittle on the eighth day of July, in the year 1903, and during the period of time from that date until and on the first day of September in the year 1905, did in the Middle District of Tennessee unlawfully engage in a conspiracy in restraint of trade and commerce among the several States of the United States in violation of section one of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and for that on said eighth day of July, 1903, at and within the County of Davidson, in the said Middle District of Tennessee, in violation of the provisions of section 5440 of the Revised Statutes of the United States, the said Fortesque Whittle did unlawfully conspire with divers other persons and corporations to com-

mit an offense against the United States, to-wit, the offense of engaging in a combination in restraint of trade and commerce among the several States of the United States; and application has been made to me that the said Fortesque Whittle may be arrested and imprisoned and removed or bailed, as the case may be, for trial before the said Circuit Court of the United States for the Middle District of Tennessee;

Now therefore, you are hereby commanded to arrest the
145 said Fortesque Whittle if he be found within your said District, and bring him forthwith before me at my Chambers in Richmond, in order that he may be dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge.

Marshal's Return.

Pursuant to the within writ, I have taken the defendant Fortesque Whittle into custody and now have him before Hon. Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia.

July 14, 1906.

MORGAN TREAT,
United States Marshal.

Conclusions of the Court.

Filed July 14th, 1906.

THE UNITED STATES
vs.
FORTESQUE WHITTLE.

The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation of the laws of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District
146 Judge sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a criminal charge prior to the trial upon the merits, when such Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the government's presentation of a sufficient indictment regularly found by a grand jury in a court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto.

Order Allowing Bail.

Filed July 14th, 1906.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Fortesque Whittle having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of Section 5440 of the Revised Statutes of the United States, it is ordered that the said Fortesque Whittle give
147 bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said Court under the said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14", 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Warrant of Imprisonment and Removal.

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Fortesque Whittle stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 933 in said Court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al,*" for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Fortesque Whittle having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by
148 me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in de-

fault thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Fortesque Whittle in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the
Eastern District of Virginia.

Marshal's Return on Foregoing Warrant.

Executed July 14, 1906 by taking the within named defendant Fortesque Whittle into custody, but before the order of removal was executed, a writ of *Habeas Corpus* was issued by order of the Circuit Court of the United States for the Eastern District of Virginia, sitting at Richmond, Virginia, commanding me to produce the body of the said Fortesque Whittle before the said United States Circuit Court in the City of Richmond, Virginia, forthwith, and in pursuance of said writ of *Habeas Corpus,* I took the said Fortesque Whittle before the United States Circuit Court at aforesaid,
149 by which court said writ of *Habeas Corpus* was discharged and an appeal allowed to the said Fortesque Whittle to the Supreme Court of the United States, pending which appeal the said Fortesque Whittle was by order of said Circuit Court discharged from custody on bond conditioned for his appearance before said Circuit Court to abide such order as should be made by said Circuit Court upon return of the mandate of said Supreme Court of the United States upon determination of said appeal.

Richmond, Virginia, July 14, 1906.

MORGAN TREAT,
United States Marshal.

Statement of Proceedings and Order.

Filed July 14, 1906.

THE UNITED STATES OF AMERICA, *Eastern District of Virginia:*

THE UNITED STATES
vs.
FORTESQUE WHITTLE.

This is an application under the provisions of Section 1014 of the United States Revised Statutes for a warrant for the removal of

Fortesque Whittle to the Middle District of Tennessee and comes before me as follows:—

The District Attorney for this District, together with Mr. E. T. Sanford, Counsel for the United States, presented to me a verified complaint of Morgain Treat, United States Marshal for this District, with the certified copy of an Indictment filed on May 25th, 1906, in the Circuit Court of the United States for the Middle District of Tennessee in the case of the United States
150 *vs.* Virginia-Carolina Chemical Company and other defendants, including among such defendants the said——

Said complaint and copy of said indictment are made parts of this order. Upon the exhibition of this Indictment and affidavit and the *ex parte* motion of the counsel for the United States I made an order for the arrest of said Fortesque Whittle and his production before me.

This order was duly executed by the said Marshal, who arrested the said Fortesque Whittle and brought him before me in Richmond on this 14th day of July, 1906, as shown by his return. When the accused was so brought before me it was moved by the counsel for the United States that inasmuch as the indictment charged offenses against the United States triable in the Circuit Court of said United States for the Middle District of Tennessee, and the identity of the defendant was admitted, that an order be forthwith made for the commitment of said Fortesque Whittle for trial before said Circuit Court.

This motion was made upon the certified copy of the indictment without any further testimony, the identity of the party arrested and brought before me as the Fortesque Whittle mentioned in the Indictment being admitted.

And thereupon the defendant Fortesque Whittle offered himself as witness in his own behalf, and being about to be sworn, the United States, by its counsel, thereupon objected to the witness being sworn or to any testimony being given in rebuttal of the Indictment in these proceedings, on the ground that the identity of the defendant being admitted, inasmuch as the Indictment on its face charges offenses against the United States committed and triable in the jurisdiction in which the defendant stands indicted, no evidence is admissible here to impeach the indictment, and the order of commitment should be made without other proof.

The Defendant's counsel thereupon offered to prove by the defendant and other witnesses then and there present, that the Circuit Court for the Middle District of Tennessee had no jurisdic-
151 tion over the person of said defendant touching the offense charged in said indictment, in that defendant and said other witnesses would, if permitted, testify.

That he was not on the 8th day of July, 1903, or during the period of time between the eighth day of July, 1903, and the 1st day of September, 1905, in the State of Tennessee, or the Middle District of Tennessee and that he has not been in the Middle District of Tennessee or the State of Tennessee since June 1900; that he did not enter, assent to, join or engage in the conspiracies in the indict-

ment mentioned, or any of them within the Middle District of Tennessee at the time mentioned therein, or at any other time; that he did not within the period mentioned, or at any other time within the Middle District of Tennessee do any act or thing to promote or further the said conspiracies in the indictment mentioned or any of them, or to effect the object or purposes thereof; that he did not at any time or any place join, assent to, enter or engage in the conspiracies, or any of them, engaged in the Middle District of Tennessee, alleged or aver-ed in the said indictment.

Thereupon counsel for the Government renewed its objections as aforesaid. After hearing counsel on both sides, the Court announced its conclusions as follows:—

"The conclusion reached by the Court is that in a proceeding for the arrest and removal of persons charged with a violation
152 of a law of the United States pursuant to section 1014 of the Revised Statutes of the United States, before a United States District Judge, sitting in the State of Virginia, in which State there no longer exists the right of a preliminary examination upon a crime charged prior to the trial upon the merits, when said Judge is called upon to act as well in the matter of the apprehension of such persons, as in their removal to the jurisdiction in which they have been indicted, that upon the Government's presentation of a sufficient indictment, regularly found by a grand jury in a Court of the United States, properly charging the commission of an offense within the district in which such indictment is found, coupled with proof of the identity of the person indicted, it is its duty to properly bail such person for appearance before the Court in which he is indicted, or cause him to be removed thereto."

Therefore it was ordered that the testimony offered is inadmissible, and will not be received, and I therefore made the following order:

UNITED STATES OF AMERICA, *Eastern District of Virginia, sct:*

The within named Fortesque Whittle having been brought before me, and identified; and it appearing by a duly authenticated copy of an indictment that he stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said Court entitled "The United States *vs.* Virginia-Carolina Chemical Company *et al.,*" for violation of section one of the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the
153 United States, it is ordered that the said Fortesque Whittle give bail in the sum of five thousand dollars with one or more sufficient sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial before said court under the said indictment; or that in default

thereof he be imprisoned for seasonable removal to the said Middle District of Tennessee, to be there dealt with according to law.

Richmond, Va., July 14th, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

And after said order had been made and the defendant declined to give bond, the counsel for the United States moved that the warrant do issue directed to the Marshal of this District for the imprisonment and removal of the said Fortesque Whittle to the Middle District of Tennessee and his delivery to the custody of the United States Marshal of that district.

On such motion counsel for the said Fortesque Whittle objected and again offered the said Fortesque Whittle as witness, together with the other witnesses here-before referred to, to establish the same matters and facts as hereinbefore stated with regard to the objection to the order for the commitment of the said Fortesque Whittle which testimony was again offered and was again objected to by the counsel for the United States on the same grounds as above set forth, and on the further ground that these matters could not now be inquired of in this stage of the proceedings, and was again excluded by the Court, to all of which counsel for the said Fortesque Whittle duly excepted and had the exceptions noted and entered.

I therefore issued a warrant directed to the Marshal as follows:

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Richmond, Va., July 14, 1906.

154 *Warrant of Imprisonment and Removal.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, act:*

The President of the United States to the United States Marshal of the Eastern District of Virginia, Greeting:

Whereas it has been made to appear that Fortesque Whittle stands indicted in the Circuit Court of the United States for the Middle District of Tennessee in cause No. 963 in said court entitled: "The United States *vs.* Virginia-Carolina Chemical Company *et al.*," for violation of section one of the act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and for violation of section 5440 of the Revised Statutes of the United States; and whereas the said Fortesque Whittle having been brought before me, and identified; and a certified copy of said indictment furnishing probable cause to believe him to be guilty as therein charged, and whereas it was thereupon ordered by me that said defendant give bail in the sum of five thousand dollars with one or more sureties for his appearance before the said Circuit Court of the United States for the Middle District of Tennessee for trial under said indictment, or that in default thereof he be imprisoned for seasonable removal to the said Middle District of

Tennessee to be there dealt with according to law; and the said defendant having failed and refused to give bail as required, therefore:

You are hereby commanded in the name and by the authority of the said United States to imprison the said Fortesque Whittle
155 in accordance with law, and that with all convenient speed you remove him hence to the said Middle District of Tennessee and there surrender him to the Marshal of that District, there to be dealt with according to law.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

EDMUND WADDILL, JR.,
U. S. District Judge for the Eastern District of Virginia.

Richmond, Va., July 14, 1906.

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, G. E. Bowden, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings in the therein entitled cause made in obedience to the direction in the return of the Honorable Edmund Waddill, Jr., Judge of said
156 Court to the writ of certiorari, attached to and made a part of said record.

In witness whereof, I have hereunto set my hand and affixed the seal of the said District Court, at the City of Richmond, this 14th day of July, A. D. 1906.

[Seal United States District Court.]

G. E. BOWDEN,
Clerk United States District Court,
By JOSEPH P. BRADY,
Deputy Clerk U. S. District Court.

Certificate of United States District Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia do hereby certify that the foregoing is a full and true transcript of the record and proceedings had before me in the therein entitled cause.

In witness whereof, I hereunto set my hand and seal of said Court at Richmond, this 18th day of July, A. D., 1906.

[Seal United States District Court.]

EDMUND WADDILL, JR.,
United States District Judge.

157 *Conclusions of the Court.*

Filed July 14th, 1906.

In the United States Circuit Court for the Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

Petitioner alleges that he is unlawfully deprived of his liberty. He prays that by virtue of the writ of *Habeas Corpus*, he may be discharged from custody. I find from the petition, from its exhibits, and from respondent's reply that petitioner has been committed to the Marshal of the Eastern District of Virginia by an order of the United States District Judge of that District, with directions to remove petitioner to the Middle District of Tennessee, in order that he may be there tried on an indictment in which he with others, is charged with a violation of the laws of the United States. The proceedings so resulting were conducted under the provisions of section 1014 of the Revised Statutes of the United States. The Judge so hearing the matter, and so issuing said order of removal, acted in conformity with like proceedings, as provided for in criminal actions in the state of Virginia, in which state petitioner resides, and where the application for his removal was made.

On the hearing of this petition, I am asked to permit peti-
158 tioner to offer testimony, the object of which is to show that probable cause does not exist as to petitioner's guilt of the offense of which he is charged; that he was not within the limits of the jurisdiction of the Middle District of Tennessee when said offense is alleged to have been committed; and testimony tending to show that he is innocent of the charge alleged in the indictment returned against him. Petitioner insists that he should not be removed to said Middle District of Tennessee for trial, but should be discharged from arrest. Should I, on this hearing, permit such testimony? I find from the record before me, that the indictment charges conspiracy; that it is alleged therein that petitioner with others, did in the Middle District of Tennessee, conspire to commit an offense against the laws of the United States. The indictment, in my judgment, sufficiently sets forth such offense. I find that it is in due form, and that it charges a crime; that it alleges a conspiracy such as is prohibited by the laws of the United States; and that an overt act, as described in the statute is charged as having taken

place in the Middle District of Tennessee. Such being the charge, I am of the opinion, under the law applicable thereto, that the personal presence of petitioner in said jurisdiction was not essential; and that he can be lawfully proceeded against in that district; and if the allegations set out in the indictment are sustained by competent evidence, that a conviction there can be upheld.

If such be the case, does it not follow that the testimony offered by the petitioner is immaterial? The indictment charges the commission of a crime; alleges that the petitioner with others committed it; and the laws authorizes his conviction in the district to which he has been ordered removed, if an overt act in pursuance of
159 said conspiracy was committed there. Technical objections to said indictment should not be considered by me on this hearing; they should only be heard by the court in which the indictment was returned.

While it is true that the order to remove for trial should only be issued in cases where probable cause has been shown, it is equally true that a certified copy of the indictment, with proof of the identity of the party accused, has been in a number of well considered cases, held to establish probable cause, and to authorize the warrant of removal. It must be conceded that the authorities are conflicting; but to my mind the path we should follow has been plainly indicated by the opinions of that great tribunal, whose mandates we all obey, whose judgments are the supreme law of the land. In Beavers *v.* Hanckel, 194 U. S., 73, the case rested on the efficacy of the indictment; for no other evidence of guilt was offered. The indictment was held to be *prima facie* evidence of the existence of probable cause. It satisfied the requirements of the constitution, and the laws made thereunder. Why should not the indictment in the case we now have under consideration serve the same purpose? The testimony tendered is, as I understand this case, immaterial, and the identity of the accused is admitted. His guilt or innocence is not to be ascertained by testimony offered in this jurisdiction, in connection with questions involved in the proceedings relating to the warrant of removal, or this writ of *habeas corpus*. That matter must go to the jury impaneled by the court in which the indictment was returned. To hold otherwise would result in inextricable confusion, and to discharge the petitioner on the showing now made, would tend to impede the due administration of justice; and can
160 only be done, in my opinion, by strained construction of the statutes.

The writ will be dismissed, and petitioner will be remanded to the custody of the Marshal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14th, 1906.

Order Dismissing Petition and Discharging Writ of Habeas Corpus and Allowing Appeal.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

This cause was on this, the 14th day of July, 1906, heard before the Honorable, the Circuit Court of the United States for the Eastern District of Virginia, the Honorable Nathan Goff, Circuit Court Judge, Presiding, upon the petition of said Fortesque Whittle
161 in this cause and the return of the Marshal, the defendant, thereto, and the return of the District Judge of the Eastern District of Virginia (by agreement the copy of the findings and order of said District Judge being here now taken as his return to said writ of certiorari, and the motion of the petitioner, by his counsel, hereinafter mentioned.

The petition and the return of the Marshal thereto were read, and thereupon the petitioner presented himself as a witness and his counsel moved the Court that he be sworn in order to testify as such, and as such witness to prove the facts averred and set forth in said petition, which facts were then and there repeated and restated to the Court; and his counsel then also stated that the said witness, and other persons then present as witnesses, would testify and prove that the said facts set forth and averred in the petition and exhibits, and repeated by him to the Court, were true.

Thereupon the Honorable Edward T. Sanford, Special Counsel representing the United States, and also the defendant Marshal, objected to the swearing of the said petitioner as a witness and also to the admission of said evidence, upon the ground that said evidence was immaterial and irrelevant, and that it was not allowable to contradict or transverse by evidence in this Court the averments of the indictment which had been found against the petitioner in the Circuit Court of the United States for the Middle District of Tennessee, and that there was no error in the action of the District Judge. The objection so made was sustained, and the witness not allowed to be sworn nor allowed to testify to the facts above stated, to which action of the Court the petitioner then and there excepted.

162 Thereupon it was ordered and adjudged by the said Court that the petition be dismissed and the writ of *habeas corpus* heretofore issued in this cause upon the said petition be and the same is hereby dismissed and discharged; and that the said Fortesque Whittle be remanded to the custody of said Morkan Treat, U. S. Marshal, for the Eastern District of Virginia, to be dealt with by him according to the directions of the writ of the process under which he had custody of the said Fortesque Whittle.

Thereupon, the petitioner presented his petition, setting forth that he was aggrieved by the said order dismissing the said writ of *habeas corpus*, and praying that he be allowed to prosecute an appeal from said final order or judgment, to the Supreme Court of the United States under and according to the law of the United States in that behalf made together with his assignment of error in that behalf which appeal is allowed; and the petitioner having been allowed and the said appeal being hereby granted, the petitioner, by his counsel, thereupon moved the Court that he be enlarged or admitted to bail pending the decision of his said case upon said appeal; and thereupon it was accordingly ordered that the said petitioner and appellant be, and he is hereby enlarged upon his bond and admitted to bail, pending the said appeal to the Supreme Court of the United States; said bond to be in the penal sum of $5,000.00, to be taken and approved by the Clerk of this Court and conditioned for the said petitioner and appellant to appear before this Court to abide such order as shall be made by this Court upon the mandate of the Supreme Court of the United States upon the determination of petitioner's said appeal; and upon the execution by the said Fortesque Whittle of such bond, with surety or sureties, to be approved by the Clerk of this Court, he will be enlarged and admitted to bail. The Clerk will take as surety any satis-

163 factory guaranty company.

The opinion of the Court in dismissing the petition and discharging the writ of *habeas corpus* is made part of the record herein and will be copied by the Clerk in the transcript on appeal.

NATHAN GOFF,
U. S. Circuit Judge.

July 14, 1906.

Appearance Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Petitioner,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Respondents.

We, as principal, and American Surety Company of New York a guaranty and surety company, organized and existing under the laws of the State of New York, with power and authority to become surety for principals in appearance bonds, jointly and severally acknowledge ourselves to owe and to be bound to the United States of America in the penal sum of Five Thousand Dollars ($5,000.00), severally to be made and levied of our goods, chattels, lands and tenements, if default be made herein.

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The condition of this obligation is as follows: Whereas the said Fortesque Whittle, being detained in the custody of Morgan Treat, United States Marshal for the Eastern District of Virginia, under commitment and warrant of removal to the Circuit Court of the United States for the Middle District of Tennessee, granted by the Honorable Edmund Waddill, Jr., Judge of the District Court for the Eastern District of Virginia, presented his petition for and sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and the said writ of *habeas corpus* duly issued to the said Treat, Marshal, and he made his return thereto; and the said matter of *habeas corpus* came on for hearing before the said Circuit Court of the United States for the Eastern District of Virginia, on the 14th day of July, 1906, when by order thereof the said petition was dismissed and the said writ of *habeas corpus* discharged, and the said Fortesque Whittle remanded to the custody of the said Morgan Treat, Marshal, to be proceeded with as provided by law; and

Whereas, from the said final order dismissing the said petition and writ of *habeas corpus*, the said Fortesque Whittle prayed an appeal to the Supreme Court of the United States, which was granted and said appeal perfected; and

Whereas, the said Circuit Court of the United States allow- said appeal, ordered that pending said appeal the said Fortesque Whittle upon the execution of a bond in the penal sum of Five Thousand Dollars ($5000.00) conditioned as by said order was provided, might be enlarged and admitted to bail;

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Now, therefore, in compliance therewith, and in order to be so enlarged, the said Fortesque Whittle as principal, and the said American Surety Company of New York, as surety, execute this bond upon the condition that, if the said Fortesque Whittle shall duly personally appear in and before the Circuit Court of the United States for the Eastern District of Virginia, then and there to answer the exigency and determination of said appeal, and personally abide the final decision and determination of the said Supreme Court of the United States and of the said Circuit Court of the United States, upon the mandate of the said Supreme Court of the United States, and obey and abide the orders of said Circuit Court of the United States, and not depart without leave upon the conditions aforesaid, and upon the entry of said orders upon said appeal, then and in that event this bond or obligation shall be void; but otherwise it shall be and remain in full force and effect.

In witness whereof, the said Fortesque Whittle as principal, and the said American Surety Company of New York as surety, the said surety being represented by and through Robert Le Masurier, its duly authorized agent and attorney, have hereunto on this the 14th day of July, 1906, set their hands.

FORTESQUE WHITTLE. [SEAL.]

[Seal of American Surety Company.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROB'T LE MASURIER, *Agent.*

Signed, sealed and delivered in the presence of
JOSEPH P. BRADY, *Clerk.*

166 *Notice of Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOSEPH P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

SIRS: Please take notice that Fortesque Whittle petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 14th day of

July, 1906, by the Honorable Nathan Goff, Judge of the Circuit Court of the United States, Fourth Judicial Circuit of Virginia, discharging his application for writs of *habeas corpus* and certiorari and from each and every part of said order.

Dated at the City of Richmond, State of Virginia, on the 14th day of July, 1906.

Respectfully,

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

167 *Petition for Appeal.*

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petition of the above named petitioner Fortesque Whittle for an order, allowing an appeal to the Supreme Court of the United States from the final order in the above styled cause, discharging the writs of *habeas corpus* and certiorari in this cause and remanding petitioner to the custody of the said Morgan Treat, United States marshal.

Fortesque Whittle, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this Court in this cause on the 14th day of July, 1906, whereby it was ordered that his petition for a writ of *habeas corpus*, directed to said Morgan Treat, United States Marshal, in and for the said District of Virginia, and his writ of certiorari, directed to Hon. Edmund Waddill, Jr., United States District Judge for said
168 District, commanding him to return all the proceedings, warrants, depositions, examinations, commitments and record of all proceedings against your petitioner to the Circuit Court of the United States, were, after the same had been duly granted and return made thereon by this Honorable Court, discharged, and petitioner was by said order remanded to the custody of said Morgan Treat, United States Marshal, as aforesaid.

Now come, Jno. J. Vertress and Jas. C. Bradford, his attorneys

and counsel, praying this court for an order allowing your petitioner to prosecute an appeal from said final order of the United States Circuit Court to the Supreme Court of the United States, and according to the laws of the United States in that behalf made.

Your petitioner is advised by his counsel that *in* the proceedings referred to in the petition for writs of *habeas corpus* and certiorari, and the said order discharging the same have infringed the constitutional rights of your petitioner and that the commitment of your petitioner and the restraint of his person referred to in said petition and under said order is without authority of law and that the said United States District Judge acting as United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition hereinbefore referred to had no jurisdiction to either require bail of petitioner or to commit petitioner in default thereof, and your petitioner desires in good faith to submit the constitutional questions and other questions involved to the Supreme Court of the United States for their determination.

And your petitioner will ever pray, etc.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and of Counsel.

169 UNITED STATES OF AMERICA, *Eastern District of Virginia:*

Fortesque Whittle, being duly sworn on his oath, deposes and says that he is the petitioner above named, that the foregoing petition is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters, he believes them to be true.

——— ———.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY,
Clerk of the United States Circuit Court,
Eastern District of Virginia.

Assignment of Errors.

Filed July 14th, 1906.

In the Supreme Court of the United States.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

The petitioner, Fortesque Whittle, by John J. Vertress and
170 Jas. C. Bradford and John S. Miller, his Counsel in connection with his petition of appeal herein, entered herein, to the Supreme Court of the United States, from the final order made and entered in the United States Circuit Court of the Fourth Judicial Circuit in and for the Eastern District of Virginia, discharging the writs of *Habeas Corpus* and certiorari and remanding petitioner to the custody of the said Morgan Treat, Marshal, *and* makes and files the following assignment of errors:

1. The court erred in discharging the petitioner's writs of *Habeas Corpus* and Certiorari and remanding him to the custody of the United States Marshal.

2. In refusing to grant the prayer of said writs.

3. In refusing to discharge said petitioner.

4. In holding that the restraint of the petitioner's liberty is legal.

5. In holding that the restraint of your petitioner is not in violation of his substantial rights.

6. In holding that said alleged indictment or any count thereof stated an offence against the laws of the United States.

7. In holding that the alleged indictment, or any count thereof was sufficient upon which to base a warrant of removal.

8. In holding that there was sufficient evidence of probable cause.

9. In holding that the warrant of removal made by the United States District Judge for the Eastern District of Virginia was issued upon the finding of probable cause; and in not holding that said order & warrant of removal were unauthorized & void because said District Judge refused to receive or hear any evidence offered by petitioner.

10. In holding that the alleged indictment with proof of
171 identity was conclusive evidence of probable cause.

11. In holding that upon the introduction in evidence of the alleged indictment with proof of identity that the defendant, your petitioner, was not entitled to introduce evidence offered by him and in refusing to hear or receive evidence offered by him to

show that the alleged offence, charged in said indictment and in each count thereof had not been committed by him in the State of Tennessee, in which state the indictment was found and in so holding, violating Article V and Article VI of the Amendments to the Constitution of the United States in that he was deprived of his liberty without due process of law.

12. In failing to hold that your petitioner is deprived of his liberty without due process of law in violation of Article V of the Amendments to the Constitution of the United States, in that said District Judge refused to hear or receive any evidence offered by your petitioner in that the complaint and evidence referred to herein, which were the sole authority for the petitioner's arrest and commitment as aforesaid failed to charge the petitioner with any crime against the laws of the United States.

13. In failing to hold that the petitioner's detention was in violation of Article V of the amendments to the Constitution of the United States in that the said United States District Judge, sitting as United States Commissioner and the United States District Judge has such jurisdiction to order the arrest and commitment of your petitioner, and that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

14. In failing to hold that restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon
172 which the warrant in this case was issued that it was wholly void.

15. In failing to hold — the restraint of your petitioner is in violation of the provisions of Article IV of the amendments to the Constitution of the United States for the reasons particularly specified in his petition for a writ of *habeas corpus*.

16. In holding that a warrant of removal should issue for the reason that the proceedings conclusively show, by the indictment that the venue for the facts alleged in the indictment is not and was not in the Middle District of the State of Tennessee or in the State of Tennessee.

17. In failing to hold that the restraint of your petitioner is in violation of the provisions of Article VI of the amendments to the constitution of the United States for the reason that upon the proof offered to be made and rejected by the United States District Judge, sitting as a commissioner, and the United States District Judge and this Honorable Court, sitting upon the hearing of the petition of *habeas corpus*, and by the averments of said petition which were not controverted, it was conclusively shown that the offences charged in the indictment were not committed in the Middle District of the State of Tennessee or in the State of Tennessee, and that he could not be lawfully tried by a jury of the State of Tennessee and of the Middle District of Tennessee where said indictment was found.

18. In holding that the warrant of removal was properly issued, as the record and proceedings conclusively show that the alleged offence, complained of in the indictment and the several counts thereof, did not occur within the Middle District of the State of

Tennessee, or in the State of Tennessee, and that your pe-
173 titioner did not conspire to commit any offence within the State of Tennessee, or in the Middle District thereof.

19. In holding that your petitioner was lawfully in the custody of said Morgan Treat, United States Marshal in and for the Eastern District of Virginia, and was lawfully deprived of his liberty by him by due process of law.

20. For other errors appearing on the record, by reason whereof, the petitioner prays that the said order, discharging said writs of *Habeas Corpus* and Certiorari be reversed and the petitioner discharged from custody.

JOHN J. VERTRESS,
JAMES C. BRADFORD,
JOHN S. MILLER,
Attorneys for Petitioner and Appellant.

Appeal Bond.

Filed July 14th, 1906.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

174 Know all men by these presents, that, we, Fortesque Whittle and James G. Tinsley his surety, are held and firmly bound unto the United States of America, in the full and just sum of Five hundred dollars to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 14th day of July, 1906.

Whereas, lately, to-wit; on the 14th day of July, 1906, at the Circuit Court of the United States, in and for the Fourth Judicial Circuit, Eastern District of Virginia, in a proceeding therein pending, an order was entered discharging the writs of *habeas corpus* and certiorari, of the above named petitioner in the above mentioned proceeding and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of said Circuit Court to review the same,

Now, the Condition of the Above Obligation, is such, that if the said petitioner Fortesque Whittle, shall prosecute said appeal to effect and shall answer all costs if he should fail to make said appeal good, then this obligation to be void; else to remain in full force and effect.

FORTESQUE WHITTLE. [SEAL.]
JAMES G. TINSLEY. [SEAL.]

Sealed, and delivered, and taken and acknowledged, this 14th day of July, 1906, before me,

JOSEPH P. BRADY, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, To wit:

175 James G. Tinsley being duly sworn says that he is worth more than the sum of Five Hundred Dollars, over and above all his just debts and liabilities.

Sworn to before me this 14th day of July, 1906.

JOSEPH P. BRADY, *Clerk.*

Citation.

In the Circuit Court of the United States, Eastern District of Virginia.

In the Matter of the Petition of FORTESQUE WHITTLE for Writs of *Habeas Corpus* and Certiorari.

FORTESQUE WHITTLE, Appellant,
versus
MORGAN TREAT, United States Marshal in and for the Eastern District of Virginia; JOS. P. BRADY, Deputy Clerk of the District Court of the United States for the Eastern District of Virginia, and Honorable EDMUND WADDILL, JR., United States District Judge for the Eastern District of Virginia, Appellees.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Judge L. L. Lewis, United States District Attorney for the Eastern District of Virginia; Jos. P. Brady, Clerk of the United States Circuit Court for the Eastern District of Virginia; Morgan Treat, United States Marshal in and for the Eastern District of Virginia; Hon. Edmund
176 Waddill, Jr., United Stated District Judge for the Eastern District of Virginia, and Jos. P. Brady, Deputy Clerk of the United States District Court for the Eastern District of Virginia:

You are cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within thirty

days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Fourth Judicial Circuit, Eastern District of Virginia and filed in the Clerk's Office of said Court on the 14th day of July, 1906, in the cause entitled, in the matter of the petition of Fortesque Whittle for writs of *habeas corpus* and certiorari, Fortesque Whittle, appellant, *versus*, Morgan Treat, United States Marshal in and for the Eastern District of Virginia, Jos. P. Brady, Deputy Clerk of the District Court of the United States in and for said Eastern District of Virginia, and Hon. Edmund Waddill, Jr., United States District Judge in and for said Eastern District of Virginia, Appellees, to show cause, if any, why the final order of said Circuit Court, rendered against the appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Nathan Goff, Judge of the United States Circuit Court, this 14th day of July, A. D., 1906.

NATHAN GOFF,
Judge of the Circuit Court of the United States.

Acceptance of Service by United States District Judge.

Legal service of the within Citation is hereby acknowledged this 21st July, 1906.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

177 *Marshal's Return.*

Executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va., a true copy of the within citation to the following named persons viz: L. L. Lewis United States District Attorney for the Eastern District of Virginia, Joseph P. Brady Clerk of the United States Circuit Court for the Eastern District of Virginia, Joseph P. Brady Deputy Clerk of the United States District Court for the Eastern District of Virginia.

MORGAN TREAT,
United States Marshal.

Further executed this 23rd day of July 1906, by delivering in person in the City of Richmond, Va. to Morgan Treat United States Marshal for the Eastern District of Virginia, a true copy of this citation.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT,
Office Deputy Marshal.

178 *Order Transmitting Record.*

And thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States of America, and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY,
Clerk United States Circuit Court.

Clerk's Certificate.

THE UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record and proceedings of the said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said Circuit Court of the United States for the Eastern District of Virginia, at Richmond, this 10th day of August, A. D., 1906.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 20,338. E. Virginia C. C. U. S. Term No. 373. Fortesque Whittle, appellant, *vs.* Morgan Treat, United States marshal in and for the eastern district of Virginia, *et al.* Filed August 14, 1906. File No. 20,338.